

# 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 in 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 emphasizes the principal aspects of the relationship between the work of the Committee of Experts and the multilateral system (**Part 1A, pages 5–27**).
- (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 33–713**).
- (d) **Part III: General Survey**, in which the Committee of Experts examines the application of ILO standards, whether or not they are ratified, in a particular subject area. The General Survey is published as a separate volume (Report III (Part 1B)) and this year examines the Labour Clauses (Public Contracts) Convention (No. 94) and Recommendation (No. 84), 1949 (**Part 1B**).

Finally, the *Information document on ratifications and standards-related activities* is published 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 in international labour standards, the implementation of special 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:

<http://www.ilo.org/ilolex/gbe/ceacr2008.htm>

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## List of Conventions by subject

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

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- Convention withdrawn.

### 1 Freedom of Association, Collective Bargaining, and Industrial Relations

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

### 2 Forced Labour

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

### 3 Elimination of Child Labour and Protection of Children and Young Persons

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

### 4 Equality of Opportunity and Treatment

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

### 5 Tripartite Consultation

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

**6 Labour Administration and Inspection**

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

**7 Employment Policy and Promotion**

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

**8 Vocational Guidance and Training**

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

**9 Employment Security**

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

**10 Wages**

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

**11 Working Time**

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

**12 Occupational Safety and Health**

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

**13 Social Security**

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

**14 Maternity Protection**

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

**15 Social Policy**

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

**16 Migrant Workers**

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

**17 Seafarers**

- ★ C007 Minimum Age (Sea) Convention, 1920 (No. 7)
- C008 Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
- ★ C009 Placing of Seamen Convention, 1920 (No. 9)
- C016 Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
- C022 Seamen's Articles of Agreement Convention, 1926 (No. 22)
- ★ C023 Repatriation of Seamen Convention, 1926 (No. 23)
- C053 Officers' Competency Certificates Convention, 1936 (No. 53)
- ◆● C054 Holidays with Pay (Sea) Convention, 1936 (No. 54)
- C055 Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
- C056 Sickness Insurance (Sea) Convention, 1936 (No. 56)
- ◆● C057 Hours of Work and Manning (Sea) Convention, 1936 (No. 57)
- ★ C058 Minimum Age (Sea) Convention (Revised), 1936 (No. 58)
- C068 Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
- C069 Certification of Ships' Cooks Convention, 1946 (No. 69)
- ◆● C070 Social Security (Seafarers) Convention, 1946 (No. 70)
- C071 Seafarers' Pensions Convention, 1946 (No. 71)
- ◆● C072 Paid Vacations (Seafarers) Convention, 1946 (No. 72)
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- ◆● C075 Accommodation of Crews Convention, 1946 (No. 75)
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- 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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		C029.....	251

C105 .....	252	<b>Viet Nam</b>	
C134 .....	675	C100.....	423
C152 .....	693	C111.....	423
<b>United States</b>		<b>Yemen</b>	
C144 .....	439	C094.....	578
C182 .....	339	<b>Zambia</b>	
<b>Uruguay</b>		C029.....	259
C079 .....	342	C097.....	665
C081 .....	491	C138.....	345
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C129 .....	494	C081.....	495
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C181 .....	533	C098.....	187
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## **Reader's note**

### **Overview of the ILO supervisory mechanisms**

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

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

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

### **Role of employers' and workers' organizations**

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

In practice, the representative employers' and workers' organizations may submit to their governments' comments on the reports concerning the implementation by the latter 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.

### **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.

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

<sup>2</sup> Reports are submitted every two years for so-called fundamental and priority Conventions, and every five years for others. Since 2003, reports have been due for groups of Conventions according to subject matter.

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 these reports at the same time as adopting standards and discussing other important matters. In response, the Conference in 1926 adopted a resolution<sup>3</sup> establishing on an annual basis a Conference Committee (subsequently named the Conference Committee on the Application of Standards) and requesting the Governing Body to appoint a technical committee (subsequently named the Committee of Experts on the Application of Conventions and Recommendations) which would be responsible for drawing up a report for the Conference. These two committees have become the two pillars of the ILO supervisory system.

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

### **Composition**

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

### **Mandate**

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

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

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

The comments of the Committee of Experts on the fulfilment by member States of their standards-related obligations take the form of either observations or direct requests. Observations contain comments on fundamental questions raised by the application of a particular Convention by a member State. These observations are reproduced in the annual report of 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.<sup>8</sup> In addition, the Committee of Experts examines the application of ILO standards, ratified or not ratified, in a particular subject area decided by the Governing Body. This examination takes the form of a General Survey. This year's General Survey covers labour clauses in public contracts.

### **Report of the Committee of Experts**

As a result of its work, the Committee produces an annual report. The structure of the report is divided into the following parts:

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

<sup>4</sup> There are currently 16 experts appointed.

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

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

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

<sup>8</sup> Observations and direct requests are accessible through the ILOLEX database which is available on CD-ROM and via the ILO web site ([www.ilo.org/normes](http://www.ilo.org/normes)).

- **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 (Report III (Part 1A)).
  - **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 (Report III (Part 1A)).
  - **Part III: the General Survey** is published as a separate volume (Report III (Part 1B)).
- Furthermore, **an Information document on ratifications and standards-related activities** (Report III (Part 2)) accompanies the report of the Committee of Experts.<sup>9</sup>

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

### **Composition**

The Conference Committee on the Application of Standards is one of the two standing committees of the Conference. It is tripartite and therefore comprises representatives of governments, employers and workers. At each session, the Committee elects its Officers, which includes 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.

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 on the standards system, as well as 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 these government representatives, the members of the Conference Committee may ask questions or make comments. At the end of the discussion, the Conference Committee adopts the conclusions on the case in question. Furthermore, in accordance with the resolution adopted by the Conference in 2000, 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).<sup>10</sup>

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.

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<sup>9</sup> This document provides an overview of the recent developments in 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.

<sup>10</sup> International Labour Conference, 88th Session, 2000; *Provisional Records* Nos 6-1 to 5.

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

In numerous reports, the Committee of Experts has stressed the importance of the spirit of mutual respect, cooperation and responsibility which 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 and 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 the opportunity to make remarks at the end of the discussion on the General Survey. In a similar fashion, the Employer and Worker Vice-Chairpersons of the Conference Committee are invited to meet the Committee of Experts and discuss issues of common interest during a special session for that purpose.



## ***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 States Members of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 78th Session in Geneva from 22 November to 7 December 2007. The Committee has the honour to present its report to the Governing Body.

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 Lélío BENTES CORRÊA (Brazil), Mr Halton CHEADLE (South Africa), Ms Laura COX, QC (United Kingdom), Ms Blanca Ruth ESPONDA ESPINOSA (Mexico), Mr Abdul G. KOROMA (Sierra Leone), Ms Robyn A. LAYTON, QC (Australia), Mr Pierre LYON CAEN (France), Ms Angelika NUSSBERGER, MA (Germany), Ms Ruma PAL (India), Mr Miguel RODRIGUEZ PIÑERO Y BRAVO FERRER (Spain), Mr Amadou SÔ (Senegal), Mr Yozo YOKOTA (Japan). Appendix I of the General Report contains brief biographies of all the Committee members.

3. The Committee noted with regret that Ms Esponda Espinosa was unable to participate in its work this year.

4. Mr Sô informed the Committee of his decision not to continue contributing to its work after the expiry of his mandate. The Committee expresses its great appreciation for the outstanding manner in which Mr Sô has carried out his duties throughout his service on the Committee.

5. The Committee was deeply saddened to learn of the death, on 25 August 2007, of Mr Benjamin Aaron, former member of the Committee. A celebrated jurist and specialist in industrial relations, with a formidable talent as negotiator and arbitrator, all those who had the privilege of knowing or working with Mr Benjamin Aaron will remember him as a person with an extraordinary sense of equity who worked tirelessly for the promotion of social justice. The Committee wishes to express the esteem and friendship which those of its members who knew him felt for Mr Benjamin Aaron, as well as its gratitude for the devotion and competence he brought to the cause of international labour standards.

6. As the mandate of Ms Layton, QC, as Chairperson had come to an end, the Committee elected Ms Bellace as Chairperson as of its next session. The Committee re-elected Mr Al-Fuzaie as Reporter.

### **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 working methods of the Committee and any related subjects, in order to make appropriate recommendations to the Committee.<sup>1</sup> The subcommittee met on three occasions from 2002 to 04. During the 2005–06 sessions, issues relating to its working methods were discussed by the Committee in plenary sitting.

8. This year, the subcommittee held two meetings to examine a number of issues arising from recent discussions both in the Conference Committee on the Application of Standards and in the Governing Body. These meetings were chaired by Mr Yokota.<sup>2</sup> In considering the recommendations made by the subcommittee, the Committee agreed on the elements below.

- (1) With respect to measures to assist governments to follow up on its particular comments, the Committee recognized this as a crucial and ongoing issue, and decided to revisit it at its next session. The Committee provided guidance to

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

<sup>2</sup> Ms Laura Cox, who had presided over the discussion of the subcommittee since its first meeting in 2002, informed the Committee of her wish to stand down.

the secretariat for the preparation of its work. This guidance included a more consistent implementation of the existing criteria to distinguish observations from direct requests; and, where comments were lengthy, possible ways to help governments identify which requests to address in the first instance in order to facilitate their timely reply to the Committee.

- (2) With respect to its General Report, the Committee agreed: (a) to insert a new section highlighting cases which are examples of “good practices”, to enable governments to emulate these in advancing social progress, and to serve as a model for other countries to assist them in the implementation of ratified Conventions; (b) to resume publication next year of a section concerning highlights and major trends on topical issues arising from the Committee’s examination of reports, when such issues emerge.
- (3) The Committee discussed the request from the Workers’ group of the Conference Committee on the Application of Standards regarding the reproduction of certain previous comments in its report of the following year (i.e. a non-reporting year). This issue was also raised during its special sitting with the Vice-Chairpersons of the Conference Committee. In the course of discussions on this topic, concerns were raised about whether such a request would need to come from the Conference Committee as a whole, how it could be considered by the Committee and importantly whether there would be a process whereby a government would be able to submit any additional elements.
- (4) The Committee took note of the Governing Body’s request that the Office review existing report forms. For this purpose, the Committee designated three of its members to contribute their expertise on Conventions for which they were initially responsible in order to assist the Office’s review.

### ***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 of 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 as an observer in the general discussion of the Committee on the Application of Standards of the 96th Session (May–June 2007) of the International Labour Conference. It noted the request by the Conference Committee for the Director-General to renew this invitation for the 97th Session (May–June 2008) of the Conference. The Committee of Experts has 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 of the 96th Session of the International Labour Conference (Mr Edward Potter and Mr Luc Cortebeek, respectively) to participate in a special sitting of the Committee at its present session. Both accepted this invitation and discussed matters of mutual interest with the Committee.

11. The interactive format for this special sitting, initiated last year, was utilized again this year. The two Vice-Chairpersons of the Conference Committee provided information on the recent changes in its working methods. These changes included measures implemented to improve transparency and effectiveness of its work. Matters relating to the Committee of Experts’ report were then discussed, particularly the possibility of reproducing certain comments at the Workers’ group’s request. Within the framework of this sitting, a representative of the Director-General provided information regarding the current discussion on strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization. Explanations were provided on the possible implications and ramifications for normative action, and more specifically on the work of both committees concerning General Surveys.

## **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***

12. 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. Therefore, in cases where a report has not been submitted for a number of years, which are the most serious cases, supervision of the application of ratified Conventions cannot begin or is limited by the lack of up to date information. 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.

13. The Committee notes the discussions held in the Committee on the Application of Standards at the 96th Session (May–June 2007) 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 Committee was informed that, to follow up the discussions of the Conference Committee, the Office sent targeted letters to the 45 member States mentioned in the relevant paragraphs of the report of the Conference Committee concerning their failure to fulfil the respective obligations (there were 49 such member States in 2006 and 53 in 2005). The technical assistance activities undertaken in the context of this individualized follow-up were continued and strengthened through closer coordination between all the Office units concerned. The work of the two committees accordingly contributes to determining the priorities of the technical assistance provided primarily by the standards specialists in subregional offices, with the support, where appropriate, of national correspondents.

14. The Committee was informed that the great majority of the member States mentioned in the report of the Committee on the Application of Standards, namely 38 member States, had already been mentioned in the reports of the Committee on the Application of Standards in 2005 and 2006 for at least the same failings. The subregional offices have therefore been invited to make contact as a priority with these 38 member States. The information available this year (discussions of the Committee on the Application of Standards, information from subregional offices) confirms that the difficulties most commonly experienced by member States in fulfilling their obligations are of an institutional nature. In this respect, the difficulties encountered are caused both by the lack of resources of the authorities principally responsible for sending reports (inadequate staff numbers or staff with little knowledge of reporting procedures, frequent staff movements requiring renewed assistance from the Office) and inadequate coordination between this authority and the other authorities required to contribute to the reports. Less frequently, the difficulties can be explained by more deep-rooted reasons relating to national circumstances which go well beyond the sending of reports. In view of the nature of the difficulties encountered, the Committee hopes that reporting issues will rapidly be incorporated, where appropriate, into the Organization's broader technical cooperation programmes, as announced in the context of the new interim plan of action to enhance the impact of the standards system, recently approved by the Governing Body at its 300th Session (November 2007). The Committee also emphasizes that, in certain cases, problems that are to some extent similar to those

referred to above persist or reoccur in relation to the sending of reports on the application of Conventions declared applicable to non-metropolitan territories. This is confirmed by the low percentage of reports received this year for these territories.<sup>3</sup> The Committee hopes that the governments concerned will be able to identify appropriate measures to find a lasting solution to these problems, where necessary with the assistance of the Office.

15. The Committee notes that certain of the 45 member States referred to in the report of the Conference Committee have, frequently with the assistance of the Office, fulfilled their reporting and other standards-related obligations, in full or in part, since the end of the 96th Session of the Conference. In this respect, the Committee wishes firstly to welcome the action taken by certain member States to make up the accumulated backlog by submitting all the reports due.<sup>4</sup> It also welcomes the fact that other member States have made use of the period between the Conference and the present session of the Committee of Experts to provide most or all of the reports requested.<sup>5</sup> Finally, it notes that, according to information provided by the subregional offices, a steadily increasing number of member States have taken action to overcome their difficulties in this regard. The Committee firmly hopes that these latter States will pursue their efforts and will follow up on the matter with the assistance of the Office. The Committee's observations on compliance with reporting obligations by member States and the information provided concerning the submission of the instruments adopted by the Conference to the competent authorities are contained in Part II of its report.<sup>6</sup>

16. 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 on the effective implementation of ratified Conventions. Governments that request technical assistance may benefit from it, yet such assistance is only useful if it focuses on the specific difficulties faced. For such assistance to be appropriate and effective, governments must be prepared to inform the Office of the specific problems that they are encountering and to give effect to lasting solutions. Finally, the Committee welcomes the effective collaboration that it maintains with the Committee on the Application of Standards, on matters of mutual interest that are essential to the proper discharge of their respective tasks, in relation to improved compliance with reporting obligations.

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

### **A. Supply of reports**

17. 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.

18. In accordance with the changes in the reporting system adopted by the Governing Body in November 2001 and March 2002,<sup>7</sup> particularly with a view to facilitating the collection of information on related subjects at the national level, requests for reports on Conventions covering the same subject are grouped together and addressed simultaneously to each country.<sup>8</sup> In addition, in the case of the 12 fundamental and priority 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

<sup>3</sup> See para. 23.

<sup>4</sup> **Bosnia and Herzegovina and Serbia.**

<sup>5</sup> **Albania** (submission of first reports on Conventions Nos 174, 175 and 176 due since 2005), **Armenia** (submission of the majority of the reports due, including first reports on Conventions Nos 100, 135 and 151 due since 1996, on Convention No. 174 due since 1998, and on Conventions Nos 17 and 98 due since 2005), **Cambodia** (submission of some of the reports due), **Côte d'Ivoire** (submission of first report on Convention No. 138 due since 2005), **Kyrgyzstan** (submission of first report on Convention No. 105 due since 2001, on Conventions Nos 150 and 154 due since 2005, and on Convention No. 182 due since 2006), **Russian Federation** (submission of first report on Convention No. 152 due since 2006), **Saint Kitts and Nevis** (submission of first report on Convention No. 100 due since 2002), **Saint Lucia** (submission of the majority of the reports due, including first reports on Conventions Nos 154 and 158 due since 2002), **San Marino** (submission of some of the reports due), **Sao Tome and Principe** (submission of the majority of the reports due), **Serbia** (submission of first reports on Conventions Nos 27, 113 and 114 due since 2003, and on Conventions Nos 8, 16, 22, 23, 53, 56, 69, 73 and 74 due since 2005), **The former Yugoslav Republic of Macedonia** (submission of some of the reports due, including the first report on Convention No. 105 due since 2005), **United Kingdom** (Montserrat) (submission of some of the reports due). The following countries have since replied to all or the majority of the Committee's comments: **Albania, Bahamas, Botswana, Burkina Faso, Comoros, Cyprus, Dominica, Eritrea, Estonia, Grenada, Haiti, Indonesia, Islamic Republic of Iran, Jordan, Kazakhstan, Kiribati, Republic of Korea, Malawi, Malta, Papua New Guinea, Saint Lucia, Sao Tome and Principe, South Africa, Swaziland, United Republic of Tanzania, The former Yugoslav Republic of Macedonia and Trinidad and Tobago.**

<sup>6</sup> Part II of the present report refers to certain cases of failure to fulfil reporting and other standards-related obligations within the framework of general observations (pp. 33–39) and observations on the submission to the competent authorities of the instruments adopted by the Conference (pp. 701–713).

<sup>7</sup> Documents GB.282/LILS/5, GB.282/8/2, GB.283/LILS/6 and GB.283/10/2.

<sup>8</sup> 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>

second year by those whose names begin with the letters K to Z, or the converse<sup>9</sup> (for a list of Conventions grouped by subject see page v).

19. The Committee also had before it reports especially requested from certain governments on other Conventions 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 which it was unable to examine at its previous session.

20. 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.

21. 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**

22. A total of 2,477 reports were requested from governments on the application of Conventions ratified by member States (article 22 of the Constitution). At the end of the present session of the Committee, 1,611 of these reports had been received by the Office. This figure corresponds to 65.04 per cent of the reports requested, compared with 66.47 per cent last year.

23. In addition, 304 reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories (article 35 of the Constitution). Of these, 109 reports, or 35.86 per cent, had been received by the end of the Committee's session, in comparison with 67.71 per cent last year.

24. The Committee expresses its deep dismay that the total number of reports received on the application of ratified Conventions has decreased further this year, even though there has been a significant rise in the number of reports received within the time limits.<sup>10</sup> The Committee is also concerned at the low number of reports received for Conventions declared applicable to non-metropolitan territories. The Committee urges governments, with the assistance of the Office if they so wish, to make every effort to remedy this situation. It draws the attention of the Conference Committee on the Application of Standards in this respect. The Committee firmly hopes that measures already taken by the Office to strengthen its assistance to governments in relation to compliance with their reporting obligations will be pursued and intensified.

### **Compliance with reporting obligations**

25. 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 16 countries: **Bolivia, Cape Verde, Congo, Denmark** (Faeroe Islands), **Equatorial Guinea, Iraq, Kiribati, Liberia, Sierra Leone, Solomon Islands, Somalia, Tajikistan, Togo, Turkmenistan, United Kingdom** (Anguilla, St. Helena) and **Uzbekistan**. In addition, all or the majority of the reports due this year have not been received from the following 32 countries: **Antigua and Barbuda, Barbados, Cambodia, Chad, Democratic Republic of the Congo, France** (French Guiana, French Southern and Antarctic Territories, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon), **Gambia, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Malaysia, Malaysia (Sabah), Malaysia (Sarawak), Mauritania, Mongolia, Netherlands** (Netherlands Antilles), **Nigeria, Peru, Saint Kitts and Nevis, San Marino, Senegal, Seychelles, Slovenia, Sudan, United Republic of Tanzania** (Zanzibar), **The former Yugoslav Republic of Macedonia, Uganda, United Kingdom** (Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, Guernsey, Montserrat) and **Zambia**.

26. The Committee urges the governments of these countries to make every effort to supply the reports requested on ratified Conventions. The Committee is aware that where no reports have been sent for some time, it is likely that administrative or other problems are preventing the government concerned from fulfilling its obligations under the ILO Constitution, and it recalls that in cases of this kind, assistance from the Office, in particular through the specialists on international labour standards in the subregional offices, can help the government to overcome such difficulties, as

<sup>9</sup> 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>

<sup>10</sup> See para. 29.

recalled by the Office in the letters that it sent to certain member States cited in the report of the Conference Committee on the Application of Standards.

### **Late reports**

27. 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, where necessary, to conduct research into legislation and other documents necessary for the examination of reports and legislation.

28. Once again this year, the Committee is bound to express concern at the numbers of reports that are received after the prescribed time period. The supervisory procedure 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.

29. However, the Committee observes that by 1 September 2007, the proportion of reports received was 34.2 per cent, compared with 28.8 per cent at its previous session. While this percentage has risen slightly each year since 2005, there has been a clear increase this year, attaining a level that has not been achieved for many years, as shown in Appendix II to this report. The Committee trusts that this trend will be maintained through the continued efforts of the member States and the Office so that the percentage of reports received by 1 September, which is nevertheless fairly low, will continue to rise.

30. Furthermore, the Committee notes that a number of countries sent some or all of the reports due by 1 September 2006 on ratified Conventions during the period between the end of the Committee's December 2006 session and the beginning of the May–June 2007 session of the International Labour Conference, or even during the Conference.<sup>11</sup> The Committee emphasizes that this practice also disturbs the regular operation of the supervisory system and makes it more burdensome. It wishes to provide herein the list of countries which followed this practice in 2006–07, as requested by the Conference Committee on the Application of Standards: **Algeria** (Conventions Nos 81, 182); **Armenia** (Conventions Nos 29, 81, 95, 98, 100, 105); **Bahamas** (Conventions Nos 81, 138); **Belize** (Conventions Nos 11, 23, 26, 29, 87, 88, 99, 105); **Bosnia and Herzegovina** (Conventions Nos 11, 12, 13, 19, 29, 90, 97, 105, 113, 126, 129, 131, 135, 138, 142, 143, 155, 156, 159, 161, 182); **Botswana** (Conventions Nos 29, 95, 105, 173, 176); **Burkina Faso** (Conventions Nos 29, 105, 129, 131, 138); **Central African Republic** (Conventions Nos 94, 138, 182); **Côte d'Ivoire** (Conventions Nos 138, 159); **Denmark – Greenland** (Convention No. 126); **Djibouti** (Conventions Nos 6, 9, 11, 12, 13, 14, 16, 17, 18, 29, 44, 45, 52, 77, 78, 81, 89, 94, 95, 98, 99, 105, 115, 120); **Dominica** (Conventions Nos 11, 16, 26, 29, 81, 87, 94, 95, 98, 100, 105, 108); **Eritrea** (Conventions Nos 29, 100, 105, 111, 138); **Estonia** (Conventions Nos 5, 6, 10, 11, 29, 105, 129, 147, 182); **Fiji** (Convention No. 159); **France** (Conventions Nos 94, 102, 113, 114, 125, 126, 156, 158, 163, 164, 166, 178, 179); **France – French Guiana** (Conventions Nos 112, 113, 114, 125, 126); **France – French Southern and Antarctic Territories** (Convention No. 87); **France – Guadeloupe** (Conventions Nos 112, 113, 114, 125, 126); **France – Martinique** (Conventions Nos 112, 113, 114, 125, 126); **France – Réunion** (Conventions Nos 112, 113, 114, 125, 126); **France – St. Pierre and Miquelon** (Conventions Nos 125, 126); **Greece** (Conventions Nos 95, 102, 124, 156, 182); **Grenada** (Conventions Nos 11, 26, 94, 95, 99); **Indonesia** (Conventions Nos 81, 138, 182); **Islamic Republic of Iran** (Conventions Nos 29, 100, 105, 122, 182); **Jordan** (Conventions Nos 29, 105, 124, 138, 147, 182); **Republic of Korea** (Conventions Nos 19, 100, 111, 122, 144, 156); **Kyrgyzstan** (Conventions Nos 105, 138, 150, 154, 160); **Malta** (Conventions Nos 11, 12, 19, 42, 87, 98, 100, 111, 141); **Netherlands – Aruba** (Convention No. 118); **Netherlands – Netherlands Antilles** (Conventions Nos 11, 12, 17, 25, 42, 118, 122); **Panama** (Conventions Nos 87, 100, 111, 122); **Papua New Guinea** (Conventions Nos 11, 12, 19, 42, 87, 98, 100, 111, 122, 158); **Peru** (Convention No. 44); **Russian Federation** (Conventions Nos 11, 29, 81, 87, 98, 100, 111, 113, 122, 150, 156); **Saint Kitts and Nevis** (Convention No. 100); **San Marino** (Conventions Nos 29, 87, 105, 160); **Sao Tome and Principe** (Conventions Nos 17, 18, 19, 81, 87, 88, 98, 100, 106, 111, 144, 159); **Slovakia** (Conventions Nos 34, 88, 144, 156); **Swaziland** (Conventions Nos 11, 12, 19, 87, 98, 100, 111, 144); **Sweden** (Convention No. 158); **United Republic of Tanzania** (Conventions Nos 11, 12, 17, 19); **United Republic of Tanzania – Tanganyika** (Convention No. 45); **Thailand** (Conventions Nos 19, 88, 100, 122, 138); **The former Yugoslav Republic of Macedonia** (Conventions Nos 87, 98); **Trinidad and Tobago** (Conventions Nos 19, 87, 98, 125, 144); **Turkey** (Convention No. 115); **United Kingdom – Isle of Man** (Convention No. 122); **United Kingdom – Montserrat** (Conventions Nos 11, 19, 26, 87, 98).

### **Supply of first reports**

31. A total of 118 of the 212 first reports due on the application of ratified Conventions were received by the time that the Committee's session ended, compared to last year when 60 of the 179 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 16 member States:

- since 1992 – **Liberia** (Convention No. 133);

<sup>11</sup> For the reports received and not received by the end of the Conference, see report of the Committee on the Application of Standards, Part Two, II, Appendix I (*Provisional Record* No. 22, 96th Session, ILC, 2007). 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>

- since 1994 – **Kyrgyzstan** (Convention No. 111);
- since 1995 – **Armenia** (Convention No. 111), **Kyrgyzstan** (Convention No. 133);
- since 1998 – **Equatorial Guinea** (Conventions Nos 68, 92);
- since 1999 – **Turkmenistan** (Conventions Nos 29, 87, 98, 100, 105, 111);
- since 2001 – **Armenia** (Convention No. 176);
- since 2002 – **Gambia** (Conventions Nos 29, 105, 138), **Saint Kitts and Nevis** (Conventions Nos 87, 98), **Saint Lucia** (Convention No. 182);
- since 2003 – **Dominica** (Convention No. 182), **Gambia** (Convention No. 182), **Iraq** (Conventions Nos 172, 182);
- since 2004 – **Antigua and Barbuda** (Conventions Nos 122, 131, 135, 142, 144, 150, 151, 154, 155, 158, 161, 182), **Dominica** (Conventions Nos 144, 169), **The former Yugoslav Republic of Macedonia** (Convention No. 182);
- since 2005 – **Antigua and Barbuda** (Convention No. 100), **Liberia** (Conventions Nos 81, 144, 150, 182), **Uganda** (Convention No. 138); and
- since 2006 – **Albania** (Convention No. 171), **Dominica** (Conventions Nos 135, 147, 150), **Georgia** (Convention No. 163), **Kyrgyzstan** (Conventions Nos 17, 184), **Nigeria** (Conventions Nos 137, 178, 179).

32. The Committee, like the Conference Committee on the Application of Standards, 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. The Committee urges the governments concerned to make a special effort to supply these reports.

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

33. 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. Of the 32 governments to which such letters were sent, only eight have provided the information requested.

34. The Committee regrets that there are still many cases of failure to reply to its comments, either:

- (a) of all the reports requested from governments, no reply has been received; 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.

35. In all, there were 555 cases of no response (concerning 49 countries).<sup>12</sup> There were 415 such cases (concerning 47 countries) last year. Under these conditions, the Committee is bound to repeat the observations or direct requests already made on the Conventions in question.

<sup>12</sup> **Afghanistan** (Conventions Nos 13, 111, 139); **Antigua and Barbuda** (Conventions Nos 14, 17, 87, 94, 111, 138); **Barbados** (Conventions Nos 26, 81, 87, 95, 97, 98, 100, 102, 105, 111, 118, 122, 128, 138, 144, 147); **Belize** (Conventions Nos 81, 94, 95, 97, 98, 100, 111, 115, 138, 141, 144, 150, 151, 154, 155, 156, 182); **Bolivia** (Conventions Nos 1, 19, 30, 77, 78, 81, 87, 95, 96, 98, 100, 105, 111, 118, 122, 124, 129, 131, 136, 138, 156, 182); **Cambodia** (Conventions Nos 4, 6, 13, 100, 105, 111, 122, 138, 150); **Cape Verde** (Conventions Nos 17, 19, 29, 81, 87, 98, 100, 111, 118, 182); **Chad** (Conventions Nos 87, 100, 111, 144, 182); **Congo** (Conventions Nos 6, 26, 29, 81, 87, 95, 98, 100, 105, 111, 138, 144, 149, 152, 182); **Democratic Republic of the Congo** (Conventions Nos 26, 62, 87, 94, 98, 100, 102, 105, 111, 117, 118, 119, 121, 138, 144, 158, 182); **Denmark** (Conventions Nos 27, 87, 152); **Djibouti** (Conventions Nos 19, 24, 26, 29, 37, 38, 87, 88, 95, 96, 99, 100, 105, 115, 120, 122, 125); **Equatorial Guinea** (Conventions Nos 29, 87, 98, 100, 105, 111, 138, 182); **Ethiopia** (Conventions Nos 87, 98, 111, 156); **France** (Conventions Nos 27, 87, 88, 96, 97, 98, 111, 122, 137); **France: French Guiana** (Conventions Nos 27, 35, 36, 37, 38, 42, 81, 95, 100, 111); **France: French Southern and Antarctic Territories** (Conventions Nos 98, 111); **France: Guadeloupe** (Conventions Nos 27, 42, 100, 111, 115); **France: Martinique** (Conventions Nos 27, 35, 36, 37, 38, 42, 81, 94, 100, 111, 129, 131); **France: Réunion** (Conventions Nos 27, 35, 36, 37, 38, 42, 100, 111); **France: St. Pierre and Miquelon** (Conventions Nos 42, 100, 111, 122); **Gambia** (Conventions Nos 87, 98); **Guinea** (Conventions Nos 26, 87, 90, 94, 95, 98, 99, 100, 111, 113, 115, 118, 119, 121, 122, 134, 136, 143, 144, 148, 152, 156); **Guinea-Bissau** (Conventions Nos 12, 17, 18, 19, 98, 100, 111); **Guyana** (Conventions Nos 19, 42, 97, 100, 111, 137, 144); **Haiti** (Conventions Nos 12, 17, 24, 25, 42, 81, 87, 98); **Iraq** (Conventions Nos 13, 17, 22, 23, 42, 94, 95, 98, 108, 115, 120, 136, 147, 167); **Ireland** (Conventions Nos 98, 122, 144, 178, 179); **Jamaica** (Conventions Nos 29, 87, 94, 98, 122); **Kiribati** (Conventions Nos 87, 98); **Kyrgyzstan** (Conventions Nos 14, 52, 77, 78, 79, 81, 87, 95, 98, 100, 122, 124, 148, 149); **Lesotho** (Conventions Nos 26, 29, 81, 100, 105, 111, 138, 150, 158, 182); **Liberia** (Conventions Nos 22, 53, 55, 58, 87, 92, 98, 105, 111, 112, 113, 114, 133, 147); **Malawi** (Conventions Nos 26, 29, 81, 97, 99, 100, 105, 111, 129, 138, 182); **Malaysia** (Conventions Nos 81, 95, 138, 182); **Malaysia: Sabah** (Conventions Nos 94, 97); **Mali** (Conventions Nos 6, 29, 81, 100, 105, 111); **Mongolia** (Conventions Nos 98, 100, 111, 122, 123, 138, 182); **Nigeria** (Conventions Nos 8, 26, 29, 32, 81, 94, 95, 97, 105, 111, 123, 138, 182); **Pakistan** (Conventions Nos 11, 27, 29, 32, 105, 182); **Papua New Guinea** (Conventions Nos 26, 27, 29, 99, 105, 138, 182); **Peru** (Conventions Nos 26, 29, 59, 71, 77, 78, 79, 81, 90, 99, 138, 182); **Saint Kitts and Nevis** (Conventions Nos 29, 105, 111, 144, 182); **San Marino** (Conventions Nos 88, 100, 119, 142, 143, 148, 156, 182); **Senegal** (Conventions Nos 6, 10, 13, 26, 95, 99, 102, 120, 121, 182); **Seychelles** (Conventions Nos 22, 26, 99); **Sierra Leone** (Conventions Nos 17, 26, 29, 59, 81, 87, 94, 95, 98, 99, 100, 111, 125, 126, 144); **Slovenia** (Conventions Nos 27, 32, 81, 97, 129, 131, 138, 143, 173, 182); **Solomon Islands** (Conventions Nos 26, 29, 81, 94, 95); **Sudan** (Conventions Nos 26, 81, 95, 122, 138, 182); **Tajikistan** (Conventions Nos 11, 29, 77, 78, 87, 95, 98, 100, 122, 124, 126, 138); **Togo** (Conventions Nos 26, 29, 87, 98, 100, 105, 111, 138, 143, 144, 182); **Uganda** (Conventions Nos 11, 26, 87, 94, 95, 98, 122, 123, 124, 143, 144, 158, 162); **United Kingdom: Anguilla** (Conventions Nos 8, 17, 22, 23, 26, 29, 59, 94, 97, 99); **United Kingdom: Bermuda** (Conventions Nos 59, 94); **United Kingdom: British Virgin Islands** (Conventions Nos 26, 59, 94, 97); **United Kingdom: Gibraltar** (Conventions Nos 59, 81); **United Kingdom:**

36. The failure of the governments concerned to fulfil their obligations considerably hinders the work of the Committee of Experts and that of the Conference Committee on the Application of Standards. The Committee cannot overemphasize the importance of ensuring the dispatch of the reports and replies to its comments.

## B. Examination of reports

37. 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

38. In many cases, the Committee has found that no comment is called for regarding the manner in which a ratified Convention has been implemented. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form either of "observations" which are reproduced in the report of the Committee, or "direct requests", which are not published in the Committee's report, but are communicated directly to the governments concerned.<sup>13</sup>

39. 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.

40. 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.<sup>14</sup> Under the present reporting cycle,<sup>15</sup> which applies to most Conventions, such early reports have been requested after an interval of either one or two years, according to the circumstances. In some instances, the Committee has also requested the government to supply full particulars to the Conference at its next session in May–June 2008.<sup>16</sup> In addition, in certain cases, the Committee has requested governments to furnish detailed reports when simplified reports would otherwise be due.

41. 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 three general considerations. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these criteria are applicable to cases in which

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Montserrat (Conventions Nos 8, 14, 29, 59, 95, 97); **United Kingdom:** St. Helena (Conventions Nos 17, 29, 108); **Uzbekistan** (Conventions Nos 29, 98, 100, 105, 111, 122); **Zambia** (Conventions Nos 11, 17, 97, 103, 124, 131, 158, 159, 173, 176, 182).

<sup>13</sup> 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. This database is also available via the ILO web site ([www.ilo.org/normes](http://www.ilo.org/normes)).

<sup>14</sup> **Bosnia and Herzegovina** (Convention No. 13); **Angola, Kenya, Panama, Rwanda** (Convention No. 17); **Argentina, Djibouti, Dominica, Mauritania, Myanmar, Uganda, Bolivarian Republic of Venezuela** (Convention No. 26); **Angola** (Convention No. 27); **Sudan** (Convention No. 29); **Algeria** (Convention No. 32); **Chile** (Convention No. 35); **Peru** (Convention No. 55); **Peru** (Convention No. 56); **Paraguay, Sri Lanka** (Convention No. 81); **Australia, Bolivia, Cambodia, Equatorial Guinea** (Convention No. 87); **Angola, Djibouti, San Marino** (Convention No. 88); **Mexico** (Convention No. 90); **Brazil, Bulgaria, Cameroon, Central African Republic, Djibouti, France, Mauritania, Mauritius, Morocco, Netherlands, Netherlands – Aruba, Philippines, Rwanda, Singapore, Suriname, Uruguay, Yemen** (Convention No. 94); **Argentina, France – New Caledonia, Islamic Republic of Iran, Poland, Ukraine** (Convention No. 95); **Djibouti, Ghana** (Convention No. 96); **Australia, Costa Rica, Equatorial Guinea** (Convention No. 98); **Costa Rica, Libyan Arab Jamahiriya, Mauritania, Mexico** (Convention No. 102); **Czech Republic, Bolivarian Republic of Venezuela** (Convention No. 111); **Djibouti, France – French Polynesia** (Convention No. 115); **Italy, Libyan Arab Jamahiriya, Syrian Arab Republic, Tunisia** (Convention No. 118); **Democratic Republic of the Congo, Ghana, Ukraine** (Convention No. 119); **Paraguay** (Convention No. 120); **Chile, Japan, Libyan Arab Jamahiriya** (Convention No. 121); **Algeria, Cambodia, Cameroon, Comoros, Djibouti, Guinea** (Convention No. 122); **Trinidad and Tobago** (Convention No. 125); **France – New Caledonia** (Convention No. 127); **Libyan Arab Jamahiriya** (Convention No. 128); **Libyan Arab Jamahiriya** (Convention No. 130); **Brazil** (Convention No. 136); **Brazil** (Convention No. 139); **Belize, Chile, Colombia, Congo, Democratic Republic of the Congo** (Convention No. 144); **United Kingdom, United Kingdom – Isle of Man** (Convention No. 147); **Brazil, Costa Rica, Kazakhstan** (Convention No. 148); **Ecuador** (Convention No. 152); **Brazil** (Convention No. 155); **Australia, Cameroon, France, Gabon, Lesotho, Namibia, Papua New Guinea, Turkey, Uganda, Bolivarian Republic of Venezuela** (Convention No. 158); **Netherlands** (Convention No. 159); **Croatia** (Convention No. 162); **Norway** (Convention No. 168); **Brazil** (Convention No. 170); **United Kingdom** (Convention No. 180).

<sup>15</sup> After the first report, subsequent reports are requested every two years for the fundamental and priority Conventions and every five years for other Conventions (GB.258/6/19).

<sup>16</sup> **Sudan** (Convention No. 29); **Belarus, Equatorial Guinea** (Convention No. 87); **Equatorial Guinea** (Convention No. 98); **Indonesia** (Convention No. 105); **Czech Republic** (Convention No. 111); **Croatia** (Convention No. 162).

an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as a “double footnote”. The difference between these two categories is one of degree. Finally, 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 that case in the Conference Committee on the Application of Standards.

42. 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.

43. 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.

### ***Practical application***

44. It is customary for the Committee to note the information contained in the governments’ reports allowing it to appreciate 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.

45. The Committee notes that 362 reports received this year contain information on the practical application of Conventions. Of these, 52 reports contain information on national jurisprudence. Such information has been communicated mostly concerning equality and opportunity of treatment (Conventions Nos 100 and 111) and the worst forms of child labour Convention (Convention No. 182). The Committee also notes that 310 of the reports contain information on statistics and labour inspection. The majority of this information relates to Conventions concerning the elimination of child labour (Conventions Nos 138 and 182), equality and opportunity of treatment (Conventions Nos 100 and 111), labour inspection (Convention No. 81) and employment policy (Convention No. 122).

46. The Committee must stress to governments the importance of submitting such information, since it is indispensable for completing the examination of national legislation and for helping 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 the Conventions in practice.

### ***Cases of progress***

47. 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. First, the Committee emphasizes that an expression of progress can refer to different kinds of measures. In the final instance, the Committee will exercise its discretion in noting progress having regard in particular to the nature of the Convention as well as to the specific circumstances of the country.

48. Since first identifying cases of **satisfaction** in its report in 1964,<sup>17</sup> the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, following comments it has made on a specific issue, governments have taken measures through, either the adoption of an amendment to the legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions. 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. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. In so doing, the Committee must emphasize that an expression of satisfaction is limited to the particular issue at hand and the nature of the measure taken by the government concerned. Therefore, in the same comment, the Committee may express satisfaction on a

<sup>17</sup> See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

particular issue, while raising other important issues which in its view have not been addressed in a satisfactory manner. Further, if the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up on its practical application.

49. As regards the visibility and impact that cases of progress may have, the Committee welcomed the discussion at the Conference Committee on the Application of Standards at the 96th Session (May–June 2007) of the application of the Occupational Safety and Health Convention, 1981 (No. 155), in Spain, which permitted ILO member States to learn from an instructive case of good practice.

50. Details concerning these cases are to be found in Part II of this report and cover 65 instances in which measures of this kind have been taken in 52 countries. The full list is as follows:

List of the cases in which the Committee has been able to <b>express its satisfaction</b> at certain measures taken by the governments of the following countries:	
State	Conventions Nos
Angola	18
Armenia	98
Austria	87
Belarus	81
Brazil	182
Burkina Faso	81
Cameroon	29
Canada	32
Chile	156
Cuba	183
Cyprus	87
Democratic Republic of Congo	119, 150
El Salvador	144
Fiji	87, 98
France	131
France – New Caledonia	81
Guatemala	129
Honduras	182
India	26
Indonesia	182
Ireland	81
Italy	136
Republic of Korea	81
Latvia	150
Lebanon	81, 127
Luxembourg	111
Madagascar	29, 81, 129
Malta	16
Mauritania	29
Mauritius	138, 182
Mexico	182

List of the cases in which the Committee has been able to <b>express its satisfaction</b> at certain measures taken by the governments of the following countries:	
State	Conventions Nos
Republic of Moldova	95
Morocco	26, 99
Namibia	111
Nicaragua	77
Panama	98
Paraguay	59
Peru	100
Romania	138
Russian Federation	138
Sao Tome and Principe	17
Slovenia	156
Spain	81, 129
Swaziland	81
Sweden	81
United Republic of Tanzania	29, 105, 152
Thailand	182
Tunisia	127
Turkey	118
Ukraine	111
United Kingdom – Gibraltar	42
United Kingdom – Isle of Man	5
Uruguay	79, 81
Bolivarian Republic of Venezuela	81

51. 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 2,620 since the Committee began listing them in its report.

52. Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979.<sup>18</sup> In general, cases of interest cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners. This may include: draft legislation before parliament, or other proposed legislative changes not yet forwarded or available to the Committee; consultations within the government and with the social partners; new policies; and, 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 was a compelling reason to note a particular judicial decision as a case of satisfaction. The Committee may also note as cases of interest progress made by a State, province or territory in the framework of a federal system. The Committee's practice has developed to such an extent that cases in which it expresses interest may now also encompass a variety of new or innovative measures which have not necessarily been requested by the Committee. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention.

<sup>18</sup> See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

53. 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 314 instances in which measures of this kind have been adopted in 119 countries. The full list is as follows:

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries:	
State	Conventions Nos
Afghanistan	111
Albania	87, 150
Algeria	81
Angola	19, 111
Argentina	81, 129, 150
Australia	81, 112, 156
Azerbaijan	29
Bahamas	138
Bangladesh	182
Belarus	81, 87, 98
Belgium	29, 81, 129
Benin	81, 182
Botswana	176
Brazil	81, 131, 138, 155, 182
Bulgaria	77, 87, 138, 182
Burkina Faso	98, 131, 138, 182
Burundi	182
Cambodia	87
Chile	35, 105, 156
China – Hong Kong Special Administrative Region	17, 81
China – Macau Special Administrative Region	81
Colombia	111, 129, 138
Comoros	17
Costa Rica	87, 102, 111, 138, 182
Côte d'Ivoire	81
Croatia	87, 156
Cuba	152
Cyprus	81, 152
Czech Republic	87, 144
Democratic Republic of the Congo	81, 150
Djibouti	115, 120
Dominican Republic	81
Ecuador	87
Egypt	29

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries:	
State	Conventions Nos
Eritrea	111
Estonia	6
Fiji	87, 111
Finland	81, 152
France	100, 102, 156
France – French Guiana	112
France – French Polynesia	95, 131
France – Guadeloupe	81, 112
France – Martinique	112
France – New Caledonia	81
France – Réunion	112
Gabon	81
Ghana	29, 148
Greece	105, 156, 182
Guatemala	29, 81, 97
Guyana	81, 129
Haiti	29
Honduras	32
Hungary	26, 81
Iceland	144
India	81, 111
Indonesia	81, 98, 111, 138, 182
Iraq	98
Ireland	81
Israel	81
Italy	12, 29, 102, 137, 139
Japan	98
Jordan	87, 98
Kazakhstan	81
Republic of Korea	19, 81, 111
Latvia	6, 122, 150, 158
Lebanon	29, 77, 81, 90, 111, 136, 182
Libyan Arab Jamahiriya	29, 81, 102, 128, 130, 131
Lithuania	29, 88, 131, 156, 182
Luxembourg	81, 111
Madagascar	6, 81, 111, 122, 124, 129, 138, 182

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries:	
State	Conventions Nos
Malawi	150
Malaysia	29
Mali	138, 182
Malta	81, 129
Mauritania	81, 182
Mauritius	26, 32, 111, 156, 182
Mexico	111, 173, 182
Republic of Moldova	29, 122, 182
Morocco	81
Mozambique	81
Namibia	111, 138, 150, 182
Nepal	182
Netherlands	102, 156, 182
New Zealand	32, 59, 81, 100, 111
Nicaragua	77, 78, 111, 122
Niger	29, 102, 111, 182
Norway	8, 111, 129
Pakistan	59, 81
Panama	87, 122, 138, 182
Papua New Guinea	111
Paraguay	169
Peru	55, 56, 111, 156
Philippines	138, 182
Poland	29, 182
Portugal	81, 129, 131, 156, 182
Romania	105, 138, 182
Russian Federation	81, 95, 111, 138, 156
Rwanda	123, 138, 182
Saudi Arabia	90, 182
Senegal	81, 122, 138
Serbia	90
Singapore	29, 81, 138, 182
Slovakia	77, 78, 100, 111, 124, 156
South Africa	182
Spain	68, 81, 94, 97, 122, 129, 131, 138, 173
Sri Lanka	138, 182

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries:	
State	Conventions Nos
Sudan	29, 111
Suriname	81
Swaziland	81
Sweden	81, 111, 156, 184
Switzerland	29, 182
Syrian Arab Republic	29, 87, 131, 138
United Republic of Tanzania	138, 182
United Republic of Tanzania – Tanganyika	81
Thailand	29, 138, 182
Trinidad and Tobago	100
Turkey	77, 88, 123
Uganda	182
Ukraine	81, 124, 129, 138, 150, 156, 182
United Arab Emirates	182
United Kingdom	29, 105, 182
United Kingdom – Jersey	81, 99
United States	147
Uruguay	81, 94, 95, 129, 138, 182
Bolivarian Republic of Venezuela	26, 169
Viet Nam	6, 81, 111
Zambia	29, 150
Zimbabwe	81

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

54. The question of the application of the Marking of Weight (Package Transported by Vessels) Convention, 1929 (No. 27) in relation to modern methods of cargo handling, with particular reference to containers is addressed in a general observation which appears as an introduction to individual examination of the reports under this Convention.

55. The necessity for effective cooperation between the system of labour inspection and the judicial system is also emphasized in a general observation on the application of the Labour Inspection Convention, 1947 (No. 81), and of the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

### ***Role of employers' and workers' organizations***

56. 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.

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

57. Since its last session, the Committee has received 532 comments (compared to 518 last year), 40 of which were communicated by employers' organizations and 492 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.

58. The majority of the comments received (508) relate to the application of ratified Conventions (see Appendix III).<sup>19</sup> Some 281 of these comments relate to the application of fundamental Conventions and 252 concern the application of other Conventions. Moreover, 24 comments concern reports provided by governments under article 19 of the Constitution on the Labour Clauses (Public Contracts) Convention (No. 94) and Recommendation (No. 84), 1949.<sup>20</sup>

59. The Committee notes that, of the comments received this year, 352 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 173 cases, the governments transmitted the comments with their reports, sometimes adding their own comments.

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

61. The Committee notes that in most cases the employers' and workers' organizations endeavoured to gather and present elements of law and fact on the application in practice of ratified Conventions. The Committee recalls that it is important 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 the 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 application in practice. The Committee hopes that the Office can provide adequate assistance in this regard to the organizations concerned.

62. At its 77th Session (November–December 2006), the Committee gave the following guidance to the Office as to the usual procedure to be followed in determining the treatment of comments received from workers' and employers' organizations in a non-reporting year.

63. Where these comments simply repeat comments made in previous years, or refer to matters already raised by the Committee, they will be examined in the normal two-year or five-year cycle, when the government's report is due, and there will be no request for a report outside that cycle. This procedure will apply also 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.

64. The position is different where the comments raise serious allegations of important acts of non-compliance with particular Conventions. In this case, where the allegations appear sufficiently substantiated, there will be a request for the government to reply to these allegations outside the normal cycle and the Committee will consider the comments in the year in which they have been received. This procedure will apply also to comments referring to important legislative changes, or to proposals which have a fundamental impact on the application of a Convention; and, further, to comments which refer to minor, new legislative proposals or draft laws, not yet examined by the Committee, where its early examination may assist the government at the drafting stage.

65. The aim of this guidance is to provide assistance and to achieve consistency in dealing with such comments.

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

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

67. 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 Maritime Labour Convention, 2006, adopted by the Conference at its 94th (Maritime) Session on 23 February 2006;

<sup>19</sup> An indication of the observations made by employers' and workers' organizations on the application of Conventions received during the current year is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>

<sup>20</sup> See Report III (Part 1B) of the present report containing the General Survey.

- (b) information on the steps taken to submit to the competent authorities the instruments adopted by the Conference at its 95th Session (Convention No. 187 and Recommendations Nos 197 and 198) on 16 June 2006;
- (c) replies to the observations and direct requests made by the Committee at its 77th Session (November–December 2006).

68. At its 96th Session (June 2007), the Conference adopted the Work in Fishing Convention (No. 188) and Recommendation (No. 199). A number of governments have already sent the Office information on the steps taken to submit these instruments to the competent authorities. Appendix IV of Part Two of the report contains a summary indicating the name of the competent authority to which the instruments adopted by the Conference at its 94th, 95th and 96th Sessions were submitted and the date of submission.

69. 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.

### **94th Session**

70. The Maritime Labour Convention, 2006, was to be submitted to the competent authorities within 12 months or, under exceptional circumstances, within 18 months of the closure of the session of the Conference, that is, by 23 February 2007 or 23 August 2007, respectively. In all, 66 governments out of the 178 member States concerned have sent information on steps taken in this regard: **Afghanistan, Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Benin, Bulgaria, Burkina Faso, Canada, China, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, France, Gabon, Germany, Greece, India, Indonesia, Israel, Italy, Japan, Jordan, Republic of Korea, Latvia, Lebanon, Lesotho, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Morocco, Mozambique, Myanmar, New Zealand, Nicaragua, Norway, Oman, Philippines, Poland, Portugal, Romania, San Marino, Saudi Arabia, Singapore, Slovakia, Switzerland, United Republic of Tanzania, Thailand, Tunisia, Turkey, United Kingdom, Uruguay, Bolivarian Republic of Venezuela, Viet Nam and Zimbabwe.**

71. The Committee welcomes the two ratifications of the Maritime Labour Convention, 2006 by **Liberia** and **Marshall Islands** registered on 7 June 2006 and 25 September 2007, respectively. It further welcomes the information received to date on the technical measures already taken at national level and on the tripartite consultations held to examine the Maritime Labour Convention, 2006. This information enables the Office to target the technical assistance requirements of States wishing to ratify and apply this important Convention.

### **95th Session**

72. At its 95th Session in June 2006, the Conference adopted the Promotional Framework for Occupational Safety and Health Convention (No. 187) and Recommendation (No. 197) and the Employment Relationship Recommendation (No. 198). The 12-month period for submission to the competent authorities of Convention No. 187 and Recommendations Nos 197 and 198 ended on 16 June 2007, and the 18-month period, on 16 December 2007. In all, 59 governments out of the 178 member States concerned have sent new information on steps taken in this regard: **Afghanistan, Albania, Algeria, Argentina, Armenia, Barbados, Belarus, Benin, Botswana, Bulgaria, Burundi, China, Cyprus, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Israel, Italy, Japan, Republic of Korea, Latvia, Lebanon, Lesotho, Lithuania, Luxembourg, Malawi, Malta, Mauritania, Mauritius, Morocco, Myanmar, Netherlands, New Zealand, Philippines, Poland, Portugal, Romania, San Marino, Saudi Arabia, Singapore, Slovakia, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Thailand, Tunisia, Turkey, United Arab Emirates, United Kingdom, Uruguay and Viet Nam.**

73. The Committee welcomes the first ratification of Convention No. 187 by **Japan**, registered on 24 July 2007.

### **Progress noticed**

74. The Committee notes with interest the information sent in 2007 by the Governments of **Afghanistan, Armenia, Islamic Republic of Iran, Madagascar** and **Swaziland**. 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**

75. To facilitate the work of the Committee on the Application of Standards, this report mentions only the governments which have not provided any information on the submission to the competent authorities of instruments adopted by the Conference for at least the seven sessions held from June 1999 (i.e. from the 87th Session to the 94th (Maritime) Session in February 2006). This time frame was deemed long enough to warrant inviting Government delegations to a special sitting of the Conference Committee so that they may account for the delays in submission.

76. The Committee notes that at the closure of its 78th Session, i.e. 7 December 2007, five governments are in this category: **Solomon Islands, Uzbekistan, Sierra Leone, Somalia and Turkmenistan**. The Committee is aware of the exceptional circumstances that have affected these countries for many decades and knows that they often lack the appropriate institutions to discharge the obligation of submission.

77. The Committee has already indicated that the Director-General has requested the member States to give top priority to the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182). In this regard, the Committee noted its concern about the fact that by simply submitting and ratifying Convention No. 182, certain governments avoid being placed in the category of States that have not submitted any of the instruments adopted over the “last seven sessions” of the Conference, even though they are significantly behind with regard to submission.

78. Indeed, at present, it appears that more than 50 governments have failed to provide any information on submission to the competent authorities of the instruments adopted by the Conference over the seven sessions to be considered as the period of reference in 2008 (i.e. from the 88th Session in May–June 2000 to the 95th Session in June 2006).

79. 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. There is therefore a danger that a significant number of countries not mentioned in paragraph 76 may, in reality, be experiencing considerable difficulties. The Committee therefore considers it useful to attract the attention of these countries, listed in the footnote, so that they can immediately, as a matter of urgency, take appropriate measures to bring themselves up to date.<sup>21</sup>

80. The Committee also hopes that the government authorities and the social partners in these countries will be the first to benefit from the measures taken by the Office within the framework of the new interim plan of action to enhance the impact of the standards system, recently approved by the Governing Body at its 300th Session (November 2007).

## Comments of the Committee and replies from governments

81. 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 provided 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 list of direct requests at the end of section III).

82. The Committee hopes that these 81 observations and 47 direct requests that it is addressing this year to governments will enable them better to discharge their constitutional obligation of submission and so contribute to the promotion of the standards adopted by the Conference.

83. As the Committee has already pointed out, it is important that governments provide 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 by which the instruments have been submitted to the parliamentary bodies and be informed of the proposals made as to the action to be taken on them. The obligation of submission is discharged only once the instruments adopted by the Conference have been submitted to parliament and the competent authorities have taken a decision on them. The Office has to be informed of this decision as well as of the submission of instruments to parliament.

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

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

85. In accordance with the decision taken by the Governing Body,<sup>22</sup> governments were requested to supply reports under article 19 of the Constitution on the Labour Clauses (Public Contracts) Convention (No. 94) and Recommendation (No. 84), 1949.

86. A total of 301 reports were requested and 146 were received.<sup>23</sup> This represents 48.5 per cent of the reports requested.

<sup>21</sup> The Committee draws particular attention to the situation in the following 52 countries: **Antigua and Barbuda, Bahrain, Bangladesh, Bosnia and Herzegovina, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Comoros, Congo, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Fiji, Gambia, Georgia, Ghana, Grenada, Guinea, Haiti, Ireland, Kazakhstan, Kenya, Kiribati, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Mozambique, Nepal, Papua New Guinea, Paraguay, Peru, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan and Zambia.**

<sup>22</sup> Document GB.291/9(Rev.), para. 73.

<sup>23</sup> ILO: Report III (Part 1B), ILC, 97th Session, 2008.

87. 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 has been received from the following 29 countries: **Antigua and Barbuda, Armenia, Cape Verde, Congo, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Gambia, Guinea, Haiti, Iraq, Kiribati, Kyrgyzstan, Liberia, Pakistan, Paraguay, Russian Federation, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda, Uzbekistan, Yemen.**

88. The Committee once again urges governments to provide the reports requested so that its General Surveys can be as comprehensive as possible.

89. Part III of this report (issued separately as Report III (Part 1B)) contains the General Survey on labour clauses in public contracts. 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 three members of the Committee.

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

#### **A. Cooperation in the field of standards with the United Nations, the specialized agencies and other international organizations**

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

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

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

91. 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 view of the approach to development based on human rights adopted by the United Nations. The Committee welcomes the

adoption of the Declaration on the Rights of Indigenous Peoples by the General Assembly of the United Nations on 13 September 2007.

92. The Committee notes the efforts made by the Office to provide written and oral information to United Nations treaty bodies on a regular basis, which ensures that these bodies can continue to refer to international labour standards and to recommend measures that follow up on the Committee's comments. The Committee of Experts also continued to follow the work of the United Nations treaty bodies and to take their comments into consideration where appropriate. As in previous years, this has particularly been the case in the areas of child labour, forced labour and discrimination.

93. The Committee's annual meeting with the United Nations Committee on Economic, Social and Cultural Rights took place on 22 November 2007, at the invitation of the Friedrich Ebert Stiftung. This year, the right to freedom of association was selected as the theme for discussion, with particular reference to the links between Article 8 (on freedom of association) of the International Covenant on Economic, Social and Cultural Rights and Convention No. 87, the ongoing negotiations at the open-ended working group concerning an optional protocol to the Covenant and the need for close collaboration between the ILO and the United Nations in addressing issues relating to freedom of association.

94. The Committee welcomes the continuing cooperation and dialogue with the Committee on Economic, Social and Cultural Rights, as well as other relevant human rights treaty bodies, in order to promote coherent international monitoring as a basis for action to enhance the enjoyment of and compliance with economic, social and cultural rights at the national level.

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

95. In accordance with the supervisory procedure established under Article 74(4) of the Code, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 21 reports on the application of the European Code of Social Security 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 the Committee of Experts on Standard-Setting Instruments in the Field of 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.

96. With its dual responsibility for the application of the Code and international labour Conventions relating to social security, the Committee seeks 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 of the Council of Europe and the Office may prove to be an effective means of improving the application of the Code.

\* \* \*

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

Geneva, 7 December 2007.

(Signed) R. Layton, QC,  
Chairperson.

A. 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 in Labour Law, University of Buenos Aires; former adviser to the Parliament of the Republic 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; 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; 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 Adviser to the Embassy of Kuwait (Paris), former Director of Legal Department (Kuwait Finance House).

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

Judge of Appeal for 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 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-elect of the International Industrial Relations Association; member of the Executive Board of the US branch of the International Society of Labour Law and Social Security; member of the Public Review Board of the United Automobile, Aerospace and Agricultural Implements Workers' Union; former Secretary of the Section on Labour Law, American Bar Association.

**Mr Lelio BENTES CORRÊA** (Brazil),

Judge at the Labour Federal High Court (Tribunal Superior do Trabalho) of Brazil; LLM of the University of Essex, United Kingdom; former Labour Public Prosecutor of Brazil; Professor (Labour Team and Human Rights Team) at the Centro de Ensino Unificado de Brasília.

**Mr Halton CHEADLE** (South Africa),

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

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

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

Judge at the International Court of Justice since 1994; 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.

**Ms Robyn A. LAYTON, QC** (Australia),

Justice of the Supreme Court of South Australia; LL B, LL M; Chairperson of the Advisory Panel for the Australian Centre for Child Protection; member of the Gender Committee and member of the Child Witness Handbook Committee of the Judicial College of Australia; previously a Barrister-at-Law; Judge and Deputy President of the South Australian Industrial Court and Commission; Deputy President of the Federal Administrative Appeals Tribunal; Reporter on a Child Protection framework for South Australia; Chairperson of the Human Rights Committee of the Law Society of South Australia; Director, National Rail Corporation; Commissioner on the Health Insurance Commission; Chairperson of the Australian Health Ethics Committee of the National Health and Medical Research Council; Honorary Solicitor for the South Australian Council for Civil Liberties; Solicitor for the Central Aboriginal Land Council; Chairman of the South Australian Sex Discrimination Board.

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

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

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

Doctor of Law; Professor of Law at 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; former legal adviser in the Directorate General of Social Cohesion of the Council of Europe (2001–02).

**Ms Ruma PAL** (India),

Judge of the Supreme Court of India from 2000 to June 2006; former judge in the Calcutta High Court; former member of the General Council of National Law School of India University; former member of the Executive Committee of the National Judicial Academy; former member of the General Council and Executive Council of the

West Bengal National University on Juridical Sciences (NUJS); 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; Professor, Ford Foundation Chair on Human Rights, NUJS; Ombudsman (Eastern Region) of the Confederation of Indian Industries.

**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 Amadou SÔ (Senegal),**

Honorary President of the Council of State; former member of the Constitutional Council; former President of the Social and Administrative Section of the Supreme Court; former Secretary-General of the Supreme Court; former Councillor of the Supreme Court; former President of the Social Chamber of the Court of Appeal; former Director of Judicial Services; former Councillor of the Court of Appeal; former President of the Dakar Labour Court; former Auditor of the Supreme Court; former Inspector of Railways.

**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.

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***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**

#### **Albania**

The Committee notes that most of the reports due have been received and, in particular, the first reports on the application of Conventions Nos 174, 175 and 176. The Committee wishes to acknowledge the efforts made by the Government this year, while underlining that the first report on Convention No. 171 remains due since 2006. To fulfil its obligation, the Government has continued to benefit from the assistance of the Office. The Committee notes, in particular, that the Government has clarified the procedure followed for the preparation of reports within the Ministry of Labour, while the Office has taken steps to integrate the submission of reports within the broader context of ILO technical cooperation activities. The Committee has been informed that additional assistance is planned in order to enhance the knowledge and capacities of all the ministries involved in the preparation of reports as well as of the social partners. Such assistance should enable the Government to put in place sustainable institutional arrangements for the preparation of reports. The Committee firmly hopes that the Government will pursue its efforts with the necessary support of the Office, to comply fully with its constitutional obligation concerning the submission of reports due on the application of ratified Conventions.

#### **Antigua and Barbuda**

The Committee notes with regret that the efforts initiated last year by the Government to resume the communication of the reports due on the application of ratified Conventions have not been pursued this year. Indeed, none of the reports requested have been received, including, in particular, the first reports on the application of the following Conventions: Conventions Nos 122, 131, 135, 142, 144, 150, 151, 154, 155, 158, 161 and 182, due since 2004, and Convention No. 100, due since 2005. The Government received training on the submission of reports within the framework of a workshop organized by the Office in February–March 2007. The Committee hopes that the new standards specialist in the subregion will be able to assist the Government, if there are still specific difficulties preventing it from submitting the reports due, as was pointed out by the Office in its letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007). The Committee requests the Government to take, without further delay, the necessary measures, including by requesting assistance from the Office if it so wishes, so as to comply with its constitutional obligation to provide the reports due on the application of ratified Conventions.

#### **Armenia**

The Committee notes that the Government has submitted most of the reports due on the application of ratified Conventions and, in particular, the first reports concerning the application of Conventions Nos 17, 18, 98, 100, 135, 151

and 174. The Committee wishes to acknowledge the efforts made by the Government this year, while underlining that the first reports on the application of the following Conventions remain due: Convention No. 111 (due since 1995); Convention No. 176 (due since 2001). To fulfil its obligations, the Government has continued to benefit from the assistance of the Office. The Committee notes in particular that, since its last session, the Office has provided technical advice to the working group in charge of the preparation of reports. The Committee has been informed that the Office has pledged to continue its assistance to the Government and the social partners. The Committee firmly hopes that the Government will pursue its efforts, with the necessary support of the Office, to comply fully with its constitutional obligation concerning the submission of reports due on the application of ratified Conventions.

## **Bolivia**

The Committee notes that the reports due on the application of ratified Conventions have not been received for the second consecutive year. The Committee reminds the Government that it can avail itself of the Office's technical assistance to overcome any difficulties encountered in the submission of the reports due, as was pointed out by the Office in its letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007). The Committee requests the Government to take the necessary measures without further delay, including by requesting assistance from the Office if it so wishes, so as to comply with its constitutional obligation to provide the reports due on the application of ratified Conventions.

## **Cape Verde**

The Committee notes that the reports due on the application of ratified Conventions have not been received for the second consecutive year. The Government has benefited from the assistance of the Office over the past years and in August 2007 received technical advice on the submission of reports. In these circumstances, as the Office did in its letter of 20 July 2007 to follow up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), the Committee reminds the Government that the Office's technical assistance is still available to help overcome the difficulties which appear to persist. The Committee requests the Government to take the necessary measures without further delay, including by requesting assistance from the Office if it so wishes, so as to comply with its constitutional obligation to provide the reports due on the application of ratified Conventions.

## **Congo**

The Committee notes with regret that the reports due on the application of ratified Conventions have not been received for the third consecutive year. The Government undertook to send the reports in time before the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007) and, thereafter, when the Office visited the country in August 2007 and met with representatives of the Ministry of Labour. The Government did not indicate any particular difficulties in submitting the reports due other than delays in their transmission. In these circumstances, the Committee requests the Government to fulfil without further delay its constitutional obligation to supply the reports due on the application of ratified Conventions.

## **Denmark**

### **Faeroe Islands**

The Committee notes with concern that, for the third consecutive year, the reports due have not been received.

The Committee notes the explanations given by the Government's representative before the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007) concerning, in particular, its ongoing discussions with the non-metropolitan territory on the reports due. As was pointed out in the Office's letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards, the Committee hopes that these discussions will lead to sustainable solutions concerning the submission of reports on the application of Conventions declared applicable to this non-metropolitan territory, so that the Government will fulfil its constitutional obligation to supply the reports due.

## **Dominica**

The Committee notes that the first reports on the application of the following Conventions have not been received: Convention No. 182 (due since 2003); Conventions Nos 144 and 169 (due since 2004); Conventions Nos 135, 147 and 150 (due since 2006). The Government has received training within the framework of a workshop organized by the Office in February–March 2007. The Committee hopes that the new standards specialist in the subregion will be able to assist the Government, if there are still specific difficulties preventing it from submitting the reports due, as was pointed out by the Office in its letter of 20 July 2007 following up on the conclusions of the Committee on the Application of

Standards at the 96th Session of the International Labour Conference (May–June 2007). The Committee requests the Government to take the necessary measures without further delay, including by requesting assistance from the Office if it so wishes, so as to comply with its constitutional obligation to provide the reports due on the application of ratified Conventions.

## Equatorial Guinea

The Committee notes that, for the second year in succession, the reports due on the application of ratified Conventions have not been received, including the first reports due since 1998 on Conventions Nos 68 and 92. As a result of the Office's letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), a working session on the submission of the reports was organized in September 2007 by the Office with the Ministry of Labour and Social Security. The Committee has been informed that, at the request of both the Government and the social partners, the Office will explore the possibility of further strengthening its assistance and that, within this framework, the continuation of the assistance concerning the submission of reports is considered by the Government to be a priority. In these circumstances, the Committee hopes that, with the necessary support of the Office, the Government will soon fulfil its constitutional obligation to supply the reports due on the application of ratified Conventions.

## Gambia

The Committee notes that the reports due this year on the application of ratified Conventions have not been received, including the first reports due since 2002 on Conventions Nos 29, 105 and 138 and that due since 2003 on Convention No. 182. On recent occasions, and in particular before the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), the Government explained that it very much needed the Office's technical assistance, in particular to build capacity within the Department of Labour. In its letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards, the Office expressed its willingness to explore the possibility of organizing a national tripartite activity in 2008. In these circumstances, the Committee hopes that, with the necessary support of the Office, the Government will soon fulfil its constitutional obligation to supply the reports due on the application of ratified Conventions.

## Georgia

The Committee notes that the first report due since 2006 on Convention No. 163 has not been received. The absence of this first report has prevented any examination of the application of this Convention. The Committee reminds the Government that it can avail itself of the Office's technical assistance, in particular by indicating the specific difficulties which are preventing it from submitting the report due. The Committee requests the Government to take, without further delay, the necessary measures, including by requesting assistance from the Office if it so wishes, so as to comply with its constitutional obligation to provide the first report due on the application of Convention No. 163.

## Iraq

The Committee notes with regret that, for the fifth year in succession, the reports due have not been received, including the first reports due since 2003 on Conventions Nos 172 and 182. As was pointed out by the Office in its letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), the Committee hopes that as soon as national circumstances permit, the difficulties encountered in the submission of reports will be addressed within the broader framework of the ILO's technical cooperation activities, in order to enable the Government to fulfil its constitutional obligation to provide the reports due on the application of ratified Conventions.

## Kiribati

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received. The Committee has been informed that, as a result of the Office's letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), the Government has requested the assistance of the Office to submit the reports due. Technical advice has already been provided and the Committee hopes that the Office will be able to provide further assistance so as to enable the Government to fulfil its constitutional obligation to supply the reports due on the application of ratified Conventions.

## Kyrgyzstan

The Committee notes that some of the reports due have been received and, in particular, the first reports on the application of Conventions Nos 105, 150 and 154. The Committee wishes to acknowledge the efforts made by the

Government this year, while underlining that the majority of reports remains outstanding, including the first reports concerning the following Conventions: Convention No. 111 (due since 1994); Convention No. 133 (due since 1995); and Conventions Nos 17 and 184 (due since 2006). The Office provided in July 2007 assistance to the Government in the form of a tripartite seminar, involving representatives of all the ministries concerned, followed by a two-day workshop specifically designed for officials responsible for the preparation of reports. The Committee firmly hopes that the Government will pursue its efforts to tackle the backlog of reports due and that, with the continued support of the Office if it so wishes, it will fulfil in due course its constitutional obligation to supply all the reports due on the application of ratified Conventions.

## **Liberia**

The Committee notes with regret that, for the eighth year in succession, the reports requested on the application of Conventions have not been received, including the first reports due since 1992 on Convention No. 133 and those due since 2005 on Conventions Nos 81, 144, 150 and 182. In the light of the Office's letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), the Committee notes that the Government is committed to resolving its difficulties relating to the submission of reports and the Office considers that assistance should be provided as a matter of priority. The Committee welcomes this positive development and firmly hopes that the necessary steps will be taken without further delay so as to enable the Government to fulfil its constitutional obligation to supply, in due course, the reports due on the application of ratified Conventions.

## **Nigeria**

The Committee notes that the reports due this year on the application of ratified Conventions have not been received, including the first reports due since 2006 on Conventions Nos 137, 178 and 179. The absence of these first reports has prevented any examination of the application of these three Conventions. The Committee reminds the Government that it can avail itself of the Office's technical assistance, in particular by indicating the specific difficulties which are still preventing it from submitting the reports due. The Committee requests the Government to take, without further delay, the necessary measures, including by requesting assistance from the Office if it so wishes, so as to comply with its constitutional obligation to provide the reports due on the application of ratified Conventions.

## **Saint Kitts and Nevis**

The Committee notes that the first report on the application of Convention No. 100, due since 2002, has been received this year. Nonetheless, all the other reports requested remain outstanding and, in particular, the first reports on the application of Conventions Nos 87 and 98, due since 2002. The Government has received training within the framework of a workshop organized by the Office in February–March 2007. The Committee hopes that the new standards specialist in the subregion will be able to assist the Government, if there are still specific difficulties preventing it from submitting the reports due, as was pointed out by the Office in its letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007). The Committee requests the Government to take, without further delay, the necessary measures, including by requesting assistance from the Office if it so wishes, so as to comply with its constitutional obligation to provide the reports due on the application of ratified Conventions.

## **Saint Lucia**

The Committee notes that the Government has resumed the communication of the reports due on the application of ratified Conventions, after three years of interruption, by submitting nearly all the reports requested. The Committee wishes to acknowledge the efforts made by the Government this year, while underlining that the first report on Convention No. 182 remains due since 2002. The Committee hopes that the Government will soon submit the two remaining reports due, in accordance with its constitutional obligation.

## **Sierra Leone**

The Committee notes that the reports due on the application of ratified Conventions have not been received for the second consecutive year. The Committee hopes that as soon as national circumstances permit, the difficulties encountered in the submission of the reports due will be addressed. It wishes to request the Office to provide technical assistance to the Government, if the latter so accepts, as a matter of priority in order to enable the Government to comply with its constitutional obligation to provide the reports due on the application of ratified Conventions.

## Solomon Islands

The Committee notes that the reports due on the application of ratified Conventions have not been received for the second consecutive year. The Committee notes the detailed explanations given by the Government's representative before the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007) for the delays encountered in the submission of reports. The Government has requested the Office's technical assistance and, in particular, specific training for the official responsible for the submission of reports. The Committee hopes that, with the necessary support of the Office, the Government will soon fulfil its constitutional obligation to supply the reports due on the application of ratified Conventions.

## Somalia

The Committee notes that the reports due on the application of ratified Conventions have not been received for the second consecutive year. The Committee notes the explanations given by the Government's representative before the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007) concerning the difficulties encountered in this respect. The Government's representative expressed the hope that, in addition to the training received this year, the Office's assistance would continue in order to strengthen the capacity of both the Government and the social partners in relation to the submission of reports. The Committee hopes that, as soon as national circumstances permit, and as indicated in its letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards, the Office will be able to provide the necessary assistance in order to enable the Government to fulfil its constitutional obligation to supply the reports due on the application of ratified Conventions.

## Tajikistan

The Committee notes that the reports due have not been received for the second consecutive year. In the light of the Office's letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), the Committee notes that positive developments have occurred over the last year and that at its request the Government has benefited from the Office's technical assistance. A two-day workshop on reporting obligations was held in April 2007 and the issue of the submission of reports has been included in the ILO technical cooperation programmes. In these circumstances, the Committee hopes that the Government will take additional steps, including by requesting further assistance from the Office if it so wishes, so as to comply with its constitutional obligation to provide the reports due on the application of ratified Conventions.

## The former Yugoslav Republic of Macedonia

The Committee notes that the Government has resumed this year the communication of reports due, after nine years of interruption, in particular by submitting the first report on Convention No. 105 and the detailed reports on Conventions Nos 87 and 98. The Committee acknowledges the efforts made by the Government, while underlining that most of the reports requested remain outstanding, including, in particular, the first report due since 2004 on Convention No. 182. As underlined in the Office's letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), the Committee welcomes the Government's commitment to addressing the backlog of reports due and meeting its obligations. This commitment is demonstrated by the ongoing dialogue maintained by the Government with the Office and the substantial assistance received, the last instance of which is a tripartite seminar organized in September 2007 to enhance the knowledge and capacity of all the ministries concerned and the social partners. In these circumstances, and drawing the Government's attention once again to the importance of tackling the backlog of reports at a regular pace, the Committee hopes that the Government will continue the efforts made this year so as to submit, in due course, all the reports due, in accordance with its constitutional obligation.

## Togo

The Committee notes with regret that the reports due on the application of ratified Conventions have not been received for the third consecutive year. The Committee notes the explanations given by the Government's representative before the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007) concerning the difficulties encountered in this respect and in particular the lack of qualified staff in the Ministry of Labour. The Government's representative requested the Office's technical assistance to train the officials concerned. The Committee hopes that the Government and the Office will be able to agree without further delay on arrangements for the organization of the training, as indicated by the Office in its letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards. The Committee requests the Government to make every effort to fulfil its constitutional obligation to supply the reports due on the application of ratified Conventions.

## Turkmenistan

The Committee notes with regret that, for the ninth year in succession, the first reports due since 1999 on the application of the following fundamental Conventions have not been received: Conventions Nos 29, 87, 98, 100, 105 and 111. The Committee is concerned by the lack of information on the application of ratified Conventions since the country became a member of the Organization. On the other hand, the Committee notes that the Government requested assistance in the form of training on international labour standards this year. The two-day workshop, which was organized as a result of this request in April 2007, is the first activity relating to the submission of reports ever organized in the country. It therefore constitutes an important first step. The Committee hopes that the Government will take additional measures, including by requesting further assistance from the Office if it so wishes, so as to comply with its constitutional obligation to provide the reports due on the application of ratified Conventions.

## Uganda

The Committee notes that the reports due this year on the application of ratified Conventions have not been received, including the first report on Convention No. 138, due since 2005. The Committee has been informed that, as a result of the Office's letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), the Office has been in contact with the Government and that technical assistance should be provided before the end of 2007 to enable the Government to overcome its difficulties in discharging its obligations. The Committee hopes that the Government will soon be in a position to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

## United Kingdom

### Anguilla

The Committee notes that the reports due have not been received for the second consecutive year.

### Bermuda

The Committee notes that the reports due this year have not been received.

### British Virgin Islands

The Committee notes that the reports due this year have not been received.

### Falkland Islands (Malvinas)

The Committee notes that the reports due this year have not been received.

### Gibraltar

The Committee notes that the reports due this year have not been received.

### Guernsey

The Committee notes that most of the reports due this year have not been received.

### Montserrat

The Committee acknowledges the efforts made this year to resume the communication of the reports after two years of interruption. It notes nonetheless that most of the reports due this year have not been received.

### St. Helena

The Committee notes with regret that the reports due have not been received for the fourth year in succession.

The Committee has taken due note of the explanations given by the Government's representative before the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007) concerning the submission of reports regarding some of the abovementioned non-metropolitan territories. The difficulties are linked to a question of capacity and the Government is closely and actively working with the local authorities in this respect. The Committee has been informed that the Office is in contact with the Government, in particular, to provide any information it may require that would be of assistance in its ongoing discussions with the non-metropolitan territories. The

4Committee hopes that the steps taken by the Government will yield sustainable solutions so that it will be able to fulfil its constitutional obligation to supply the reports due.

## Uzbekistan

The Committee notes with regret that the reports due on the application of ratified Conventions have not been received for the third consecutive year. As a result of the Office's letter of 20 July 2007 following up on the conclusions of the Committee on the Application of Standards at the 96th Session of the International Labour Conference (May–June 2007), the Committee notes that a tripartite workshop was held in November 2007 to build the capacity of both Government representatives and social partners. The Committee welcomes this positive development. The Committee firmly hopes that the Government will take the necessary steps, including by requesting further assistance from the Office if it so wishes, to fulfil its constitutional obligation to supply the reports due on the application of ratified Conventions.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Barbados, Cambodia, Chad, Democratic Republic of the Congo, France: French Guiana, French Southern and Antarctic Territories, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Lao People's Democratic Republic, Lesotho, Libyan Arab Jamahiriya, Malaysia, Malaysia: Sabah, Sarawak, Mauritania, Republic of Moldova, Mongolia, Netherlands: Netherlands Antilles, Peru, Russian Federation, Rwanda, Saint Vincent and the Grenadines, San Marino, Senegal, Seychelles, Slovenia, Sudan, United Republic of Tanzania: Zanzibar, Zambia.*

## **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 takes note of the Government's report as well as of the observations made by the Confederation of Trade Unions of Albania (KSSH) and the Government's reply thereto. It also notes the comments made by the International Trade Union Confederation (ITUC) concerning issues already raised by the Committee and the Government's response thereto.

*Article 3 of the Convention. Right to strike.* 1. The Committee recalls that its previous comments concerned 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, given the comprehensive prohibition of this right for all workers in the public service. The Committee notes with interest from the Government's report that an amendment of the law on civil employees' status is being envisaged so as to provide authorization to stage a strike, subject to a minimum service requirement. 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. **The Committee requests the Government to indicate in its next report any progress made with a view to amending the law on civil employees' status so as to allow public servants who are not engaged in the administration of the State to exercise the right to strike and to communicate a copy of the draft amendment as soon as it is adopted.**

2. The Committee observes that section 197/7(4) of the Labour Code provides that a sympathy strike shall be lawful if it is staged in support of a lawful strike, which is organized against an employer who is actively supported by the employer of the sympathy strikers. The Committee emphasizes that workers should be able to stage sympathy strikes provided the initial strike they are supporting is itself lawful (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 168). **The Committee therefore requests the Government to indicate in its next report any measures taken or envisaged with a view to amending section 197/7(4) of the Labour Code in line with the above.**

3. **Finally, noting that the Government's report does not contain the information previously requested with regard to section 197/4 of the Labour Code, the Committee once again requests the Government to clarify the meaning of "extraordinary situation" in which a strike may be suspended and the body responsible for making the relevant determination.**

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

The Committee takes note of the information contained in the Government's report. The Committee also takes note of the observations made by the Confederation of Trade Unions of Albania (KSSH) and the International Trade Union Confederation (ITUC) as well as the Government's reply thereto.

1. *Article 1 of the Convention. Protection of workers against acts of anti-union discrimination.* In its previous comments, the Committee had requested the Government to specify the authority which has the competence to hear complaints of anti-union discrimination and impose relevant sanctions, and to provide statistical information on the number of complaints examined in the last five years, the decisions reached, etc. The Committee notes from the Government's report that currently, sections specializing in industrial relations have been attached to the civil tribunals in order to hear labour disputes. It also notes that according to the KSSH, the arbitration tribunal and the labour court envisaged in the Labour Code of 2003 have still not been set up and this is causing delays in the resolution of disputes by the civil courts where three years are needed to issue a ruling. The Committee further notes that the ITUC refers in its comments to the existence of a high number of anti-union dismissals and transfers, while the Government responds that the tribunals are the only bodies authorized to decide whether such acts took place; moreover, tripartite training activities have taken place in this regard with ILO participation.

The Committee recalls that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed. **The Committee requests the Government to indicate in its next report steps taken to ensure a mechanism of rapid and effective protection against acts of anti-union discrimination, in particular, with a view to the establishment of the arbitration tribunal and the labour court envisaged in the Labour Code of 2003.**

2. *Articles 4 and 6. Right to collective bargaining of public employees.* In its previous comments, the Committee had requested the Government to clarify the nature of the functions discharged by civil servants considered to be at the

“implementing level” and the institutions other than the ministries to which civil servants are assigned, with a view to specifying whether they are engaged in the administration of the State for collective bargaining purposes. The Committee notes from the Government’s report that the terms and conditions of civil servants in Ministries, the Parliament, the Presidency and town halls, are governed by Act No. 8549 on civil servants’ status. Other public servants such as those working for prefectures, customs, teachers, doctors etc., whose terms and conditions are governed by the Labour Code, are entitled to collective bargaining. The Committee further notes from the Government’s report under Convention No. 151, that collective bargaining takes place in state-owned enterprises.

3. *Article 4. Measures to promote collective bargaining.* In its previous comments, the Committee noted that, according to section 161 of the Labour Code, a collective agreement can be entered into at the enterprise or branch levels, and requested the Government to indicate whether collective bargaining is possible at the national level. The Committee notes the Government’s statement that it is willing to promote collective bargaining at the national level but to no avail so far; since 1993, only one Memorandum of Understanding has been concluded at the national level between the KSSH, the Independent Trade Union of Miners and the Union of Independent Trade Unions of Albania (BSPSH). The Committee notes that, according to the ITUC, national-level negotiations only take place in the tripartite National Labour Council which has not functioned recently. The Committee also notes, however, that according to the Government, the National Labour Council functions again since July 2006. ***The Committee therefore requests the Government to provide in its next report information on any collective agreement concluded at the national level.***

## Algeria

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

The Committee notes the Government’s report. It also notes the comments of the International Trade Union Confederation (ITUC) dated 28 August 2007 concerning issues already examined by the Committee. Also, the ITUC condemns steps taken to obstruct the registration of trade unions, the arrest of trade unionists and reprisals against strikers ... (in the course of the judicial procedures). In this respect, the Committee notes that the Government indicates, among other things, that no trade unionists have been harassed for the reason of their trade union activities. ***The Committee requests the Government to provide detailed information on the allegations of arrests and reprisals of teachers-trade unionists, following strike and to transmit copies of the relevant judicial decisions.***

*Article 2 of the Convention. Right to form organizations.* The Committee observes that section 6 of Act No. 90-14 of 2 June 1990, as modified, limits the right to establish a trade union to persons who have been Algerian nationals for at least ten years. The Committee recalls that the right to organize must be guaranteed to workers and employers without distinction or discrimination whatsoever, with the exception of those categories contained in *Article 9* of the Convention, and that foreign workers must also be able to establish organizations of their own choosing. ***The Committee requests the Government to take the necessary steps to ensure that section 6 of Act No. 90-14 conforms to the principles guaranteed by the Convention.***

*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 requested the Government to keep it informed of measures taken to: (1) amend the legislative provisions preventing workers’ organizations from forming federations and confederations of their own choosing, irrespective of the sector to which they belong (see sections 2 and 4 of Act No. 90-14); and (2) consult the social partners in order to eliminate any difficulties which might arise in practice from the interpretation of certain legislative provisions on the formation of federations and confederations and particularly, in this case, which might hinder the recognition of the Algerian Confederation of Autonomous Trade Unions (CASA). In its reply, the Government states that Act No. 90-14 of 2 June 1990 is inspired by Convention No. 87 and that the labour legislation does not in any way restrict either the freedom to form a trade union organization or its activities. With regard to the aspects relating to the establishment of federations and confederations under section 4 of Act No. 90-14 of 2 June 1990, the Government states that it is aware of the need to clarify the wording of this provision by introducing a definition of the notions of federation (or union) and confederation, and indicates that the section concerned is under examination so that this concern can be dealt with. With regard to the specific case of CASA, the Government states that this organization has been invited to bring its statutes into line with the provisions of the legislation currently in force. The competent authority is currently awaiting a response from CASA founders. Moreover, the Committee observes that, in Case No. 2153 examined by the Committee on Freedom of Association (see 336th Report), the Government had specified that the joint application of sections 2 and 4 of Act No. 90-14 signifies that the coming together of two different sectors, as is true in the case of the membership of the National Air Navigation Trade Union in this confederation of public administration sector unions, does not comply with the aforementioned section 2 of the Act. ***The Committee asks the Government to take concrete steps to amend the legislative provisions preventing workers’ organizations from forming federations and confederations of their own choosing, irrespective of the sector to which they belong. The Committee asks the Government to keep it informed of any measures taken in this respect.***

*Article 3. Exercise of the right to strike.* In its previous comments, the Committee also requested the Government to limit the scope of Legislative Decree No. 92-03 of 30 September 1992 (section 1 of which, read together with sections 3, 4 and 5, defines as subversive acts offences directed, in particular, 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 freedom of movement in public places or thoroughfares, under penalty of severe sanctions, including imprisonment for up to 20 years), through the adoption of legislative measures or regulations to ensure that this text may not in any event be applied to workers who have exercised the right to strike peacefully. While noting the Government's comments on the reasons for adopting this Decree, the Committee notes that Ordinance No. 95-11 of 25 Ramadhan 1415 corresponding to 25 February 1995, amending and completing Ordinance No. 66-156 of 8 June 1966 issuing the Penal Code, repeals, in its section 2, the abovementioned Legislative Decree No. 92-03 of 30 September 1992 concerning action taken to combat subversion and terrorism. The Committee notes that section 87bis of the Penal Code amended by the above Ordinance continues to define 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 freedom of movement in public places or thoroughfares, under penalty of sanctions including the death penalty, when the sanction provided for by law is life imprisonment. The Committee therefore reiterates its opinion that the very general wording of certain provisions involves a risk of infringing the right of workers' organizations to organize their activities and to formulate their programmes in defence of the interests of their members particularly through strike action. ***The Committee asks the Government to take steps to amend the Penal Code (section 87bis) so as to ensure that this text may not in any event be applied to workers who have exercised the right to strike peacefully. The Committee asks the Government to keep it informed of any developments in this respect.***

The Committee also requested the Government to amend section 43 of Act No. 90-02 of 6 February 1990, which bans strikes not only in essential services the interruption of which would endanger the life, personal safety or health of the population, but also where the strike is likely to give rise to a serious economic crisis, with collective disputes in such cases being subject to the conciliation and arbitration procedures provided for by the law. The Committee also requested the Government to amend section 48 of the same Act, which authorizes the Minister or the competent authority, where the strike persists or after the failure of mediation, to refer the dispute to the National Arbitration Commission, after consulting the employer and the workers' representatives. The Committee notes the Government's reply, according to which the expression "give rise to a serious economic crisis" set forth in section 43 of the Act 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 asks the Government to take steps to amend the legislation or adopt a regulatory text that would clarify this point along the lines indicated by the Government.*** Moreover, with regard to section 48 of the Act, the Government states that intervention is not made in a spirit of interference in the legal exercise of the right to strike, but in a spirit of conciliation of the two parties, and that this intervention only occurs when "required by pressing economic and social needs" and "after consulting the employer and the workers' representatives". The Committee reiterates that referral to arbitration to end a collective dispute is only acceptable if it is 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 therefore urges the Government to amend its legislation in the manner indicated above so as to guarantee in full the right of workers' organizations to organize their activities and to formulate their programmes without interference by the public authorities, in accordance with Article 3, and to keep it informed of any developments in this regard.***

## Angola

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

The Committee notes the Government's report as well as its reply to the comments sent by the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), of 10 August 2006 according to which the Government is the most important employer in the country and as such fixes wages unilaterally through the Ministry of Labour, Public Administrations and Social Security. The Committee notes the Government's indication that social partners take part in the National Council for Social Dialogue, within which a tripartite technical group on minimum wage fixing was created. Moreover, the social partners also participate in the National Council for Social Security, the National Committee for the ILO and the National Committee for Employment and Professional Training, as well as in the discussions concerning the drafting of any new labour legislation.

The Committee also notes the comments sent by the National Union of Angolan Workers-Trade Union Confederation (UNTA-CS) on the application of the Convention.

Referring to its previous comments, the Committee recalls that it had requested the Government to:

- amend sections 20 and 28 of Act No. 20-A/92 on the right of collective bargaining which provide that collective labour disputes in public utility enterprises may be settled by the Ministry of Labour, Public Administration and Social Security after the parties have been heard, taking into account that the list of public utility activities

(section 1.3) is broader than the concept of essential services in the strict sense of the term (those the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee notes that the Government indicates that the National Tripartite Commission for the ILO elaborated drafts modifying Trade Union Act No. 21-C/92, Strike Act No. 23/91 and Collective Bargaining Act of No. 20-A/92 which are before the competent authorities for approval. The Committee recalls once again that, in general, arbitration imposed at the initiative of the authorities is admissible only in essential services or for the purpose of concluding a first collective agreement when the trade union so requests. ***The Committee expresses the firm hope that the National Assembly will soon approve the new draft legislation which will be in full conformity with the provisions of the Convention. The Committee requests the Government to keep it informed on this subject;***

- 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. The Committee also requested the Government to specify which public services are not organized in the form of an enterprise whose employees, according to the terms of section 2 of Act No. 20-A/92, are not covered by the Act. ***The Committee observes with regret once again that the Government's report contains no indication thereupon and requests the Government to provide it with this information.***

## Antigua and Barbuda

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

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

In its previous comments, the Committee had recalled the need to amend sections 19, 20, 21 and 22 of the Industrial Court Act, 1976, which permit the referral of a dispute to the court by the Minister or at the request of one party with the consequent effect of prohibiting any strike action, under penalty of imprisonment, and which permit injunctions against a legal strike when the national interest is threatened or affected, as well as the overly broad list of essential services in the Labour Code.

On the matter of essential services, the Committee notes the inclusion of the government printing office and the port authority in the list and considers that such services cannot be considered essential in the strict sense of the term. In this respect, the Committee would draw the Government's attention to paragraph 160 of its General Survey of 1994 on freedom of association and collective bargaining wherein it states 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 third parties, the authorities could establish a system of minimum service in other services which are of public utility rather than impose an outright ban on strikes, which would be limited to essential services in the strict sense of the term. As concerns the Minister's power to refer disputes in cases of acute national crisis, the Committee notes that the power of the Minister to refer a dispute to the court under sections 19 and 21 of the Industrial Court Act would appear to apply to situations going beyond the notion of an acute national crisis. Under section 19(1), this authority of the Minister appears to be discretionary since, under section 21, this power may be used in the national interest which would appear to be broader than the strict notion of a specific situation of acute national crisis where the restrictions imposed must be for a limited period and only to the extent necessary to meet the requirements of the situation (see General Survey, op. cit., paragraph 152).

***In light of the above, the Committee once again urges the Government to indicate in its next report the measures taken or envisaged to ensure that the power of the Minister to refer a dispute to binding arbitration resulting in a ban on strike action is restricted to strikes in essential services in the strict sense of the term, to public servants exercising authority in the name of the State or in case of an acute national crisis. It further requests the Government to indicate the measures taken or envisaged to ensure that a binding referral of a collective dispute to the court can only be made at the request of both parties, and not any one of the parties as appears to be the case in section 19(2).***

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

## 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 report. It also notes the comments by the Central of Argentine Workers (CTA) dated December 2006 and 30 August 2007, those by the International Trade Union Confederation (ITUC) dated 28 August 2007 and those of the General Confederation of Labour of Argentina (CGT) dated 4 September 2007, which refer to matters the Committee has already raised. The Committee notes with concern that in its communication of August 2007, transmitted to the Government on 21 September 2007, the CTA refers to computer theft in trade union headquarters and in the offices of the CTA's legal advisor, raids on the home of a CTA official and the CTA headquarters in Buenos Aires, and assaults on demonstrators – as a result of which one worker died and several were injured – in the provinces of Neuquén, Salta, Santa Cruz and the Autonomous City of Buenos Aires. The Committee observes that no observations from the Government have been received on these comments. ***Therefore, the Committee asks the Government to undertake the necessary investigations to clarify the facts and punish the guilty parties.*** The Committee further notes the comments of 4 June 2007 by the Federation of the Professional Staff of the Government of the

Autonomous City of Buenos Aires. Lastly, it takes note of the Government's reply to the CTA's comments of December 2006.

The Committee also notes the discussion that took place in the Conference Committee on the Application of Standards in June 2007, and in particular the Conference Committee's conclusions: (1) urging the Government to reply to the CTA's application for trade union status, and (2) requesting the Government, with all the social partners and the assistance of the ILO, to elaborate draft legislation for the full application of the Convention, taking into account all the comments of the Committee of Experts. The Committee notes the information from the Government that following the conclusions of the Conference Committee, it is implementing various measures for the purpose of seeking alternative solutions with the participation of the various players concerned, that in October 2007 a meeting was held with representatives of workers (CGT and CTA) and the employers and that, in its opinion, the outcome was satisfactory and there will be further meetings to pursue the said objectives.

### *The CTA's application for trade union status*

In its previous observation, the Committee noted that the CTA's application for trade union "status" was pending and had been awaiting a decision since 2004. It urged the Government to take a decision on the matter without delay. In its comments, the CTA states that there has not as yet been any decision on its application.

The Committee notes that the Government once again indicates that the file is still active and formalities are ongoing without any delays except for the time spent waiting for submissions, which is unavoidable in so complex a case. The Government also indicates that: (a) it has observed every aspect of the principle of freedom of association and complied with the procedure laid down in the legislation – including the participation of the trade union associations entitled to take part in the proceedings, and the complainant expressly accepted this legislation by filing its application for trade union status under Act No. 23551 and its implementing decree; (b) in administrative proceedings in which first-, second- and third-level organizations are involved in an adversarial process, 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; (c) in the discussions prior to the adoption of Convention No. 87, freedom of opinion and right to defence as part of a whole complex of fundamental standards on human rights was one of the main subjects addressed, and it is not a matter of delaying proceedings but of giving all parties the opportunity to express their views and to put their case on the basis of their legitimate interests; (d) the ILO has accepted the system of representativeness and acknowledges comparison of representativeness as a means of determining trade union status; and (e) the CGT's interests as well as those of the CTA must be taken into account in a complex situation that calls for discussion and indeed implies comparing the representativeness of first-, second- and third-level organizations, and given the number of unions in Argentina with trade union status, this takes time and means examining how matters have evolved. There is no delay on the part of the administration, but a rational use of administrative resources in proceedings in which interests are disputed.

The Committee once again notes with regret that despite the length of time that has elapsed – more than three years – the administrative authority has not come to a decision on the CTA's application for trade union status. ***In these circumstances, the Committee urges the Government to ensure that a decision is reached without delay, and to keep the Committee informed.***

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

For many years the Committee has referred in its comments to certain provisions of the Act on Trade Union Associations (No. 23551) of 1988 and the decree regulating it (No. 467/88). The Committee notes the Government's statement that: (1) 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; and (2) there are currently more than 2,800 first-, second- and third-level trade union organizations in Argentina; and that there is one trade union organization for every 3,500 wage workers, which clearly indicates that freedom of association is not only a right but is widely and fully exercised. The Committee observes that the Government's only response regarding the specific provisions addressed by the Committee is a general repetition of its past observations. Taking account of the last observations of the Government, the Committee is bound to reiterate its 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 the implementing Decree No. 467/88, which qualifies the term "considerably larger" by laying down that the association claiming trade union status should have at least 10 per cent more dues-paying members than the organization which currently holds the status. According to the Government, the legislation does not offend against the principles laid down in the Convention, since a registered trade union need only be more representative in order to claim 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 too high a requirement and is contrary to the Convention. In practice, it 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 another first-level organization does not already operate in the geographical area, activity or category concerned; 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 notes that the Government indicates, in respect of section 29, that enterprise trade unions exist and function freely. They exercise the rights granted to them by law; as concerns section 30, the Government indicates that this provision had put an end to a flagrant violation of freedom of association, comprised of a “de facto” law prohibiting the presence, in a trade union, of officials and members lacking this status. The Committee nonetheless reiterates that the requirements that unions representing enterprises, trades or categories have to meet in order to obtain trade union status are excessive, and in practice restrict their access to trade union status and give 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 notes that, according to the Government, most first-level trade union associations are members of federations which have trade union status, so the first-level unions receive the trade union dues of their members through the federation, which receives them from the employer, who deducts them directly. The Government adds that there is nothing to prevent organizations which are merely registered from arranging with the employer to have the dues deducted directly from the workers’ wages. The Committee reminds the Government that for unions that obtain it, “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 such discrimination against organizations that are merely registered cannot be justified;
- 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 notes that, according to the Government, all workers or trade unions enjoy the general protection established under section 47 and may commence an action “in amparo” in case of violation of their freedom of association rights guaranteed by law. The law contains no restrictions respecting this matter. The Committee nevertheless considers that sections 48 and 52 provide preferential treatment for representatives of organizations with trade union status in the event of anti-union discrimination, and that this exceeds the privileges that may be granted to the most representative organizations, as noted in the previous paragraph.

***The Committee points out that it has been making these comments for many years and that although the Government has received technical assistance from the ILO on several occasions, the necessary measures to make the requested changes have not been taken. The Committee accordingly once again requests the Government to take steps to amend all the provision referred to in order to bring them fully into conformity with the Convention. It trusts that it will be able to note tangible progress in the very near future.***

***Determination of minimum services***

In its previous observation, the Committee noted that the CTA had 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 application in practice of the new provision, 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 notes that information sent by the Government on section 2(b) of Decree No. 272/2006 to the effect that: (1) this provision must be analysed in conjunction with the rest of the regulations, since section 10 of the Decree establishes that “if the parties fail to meet the obligations laid down in sections 7, 8 and 9 of this Decree within the time limits prescribed thereby, or if the minimum services agreed by the parties are inadequate, the implementing authority, in consultation with the Guarantees Commission, shall establish the minimum services that are essential to ensure performance of the service, the number of workers to be assigned for their provision, the work schedules and the assignment of functions and equipment, while endeavouring to safeguard both the right to strike and the rights of the users affected”; (2) section 24 of Act No. 25877 empowers the Guarantees Commission to determine as essential only services that are not provided for in the law, and it is inappropriate in legal terms to extend the Commission’s authority by regulation beyond assigning to it supplementary and consultative duties as provided, and (3) the authority ultimately assigned to the Ministry of Labour, Employment and Social Security cannot be described as unilateral and discretionary since section 10 and section 2(b) of the regulatory decree state that the implementing authority shall consult the Guarantees Commission on the establishment of minimum services, and the Ministry’s discretion is expressly limited by a requirement to “safeguard both the right to strike and the rights of the users affected”.

***The Committee requests the Government to send information on the cases in which the Guarantees Commission has intervened regarding minimum services and in particular the number of instances in which the administrative authority has changed the terms of the Commission’s opinion.***

## Armenia

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2003)***

The Committee notes the Government’s first report.

*Articles 1, 2 and 3 of the Convention.* The Committee notes with satisfaction that, following the ratification of the Convention, the legislative provisions contained in the Constitution of the Republic of Armenia of 1995, the Labour Code of 2004, as amended in 2006, the Law on trade unions of 2000 and the Criminal Code of 2003 establish prohibitions and provide for dissuasive sanctions and means of redress in case of acts of anti-union discrimination and interference.

## Australia

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

The Committee notes the information provided in the Government's reports dated 22 December 2006 and 15 January, 13 July, 20 September and 5 October 2007, in reply to the request made by the Conference Committee on the Application of Standards in June 2006 for a detailed report on the provisions of the Workplace Relations Amendment (Work Choices) Act 2005 (the Work Choices Act), which introduced extensive legislative amendments to the Workplace Relations Act 1996 (the WR Act). The Committee also notes that the Government's report of 22 December 2006 provides a reply to the comments made by the Australian Council of Trade Unions (ACTU) in a communication dated 17 May 2006, which were noted in the Committee's previous observation. The Committee finally takes note of the comments made by the International Trade Union Confederation (ITUC) in a communication dated 27 August 2007 with regard to issues already raised by the Committee and the Government's reply thereto dated 18 October 2007.

With regard to the building and construction industry in particular, the Committee notes the comments made by ACTU in a communication dated 9 October 2006, as well as the communication of the Trade Unions International of Workers of the Building, Wood and Building Materials Industries (UITBB) in support of the ACTU submission and the comments made by ITUC in a communication dated 27 August 2007. It further notes the Government's observations in this respect contained in a communication dated 13 July 2007 as well as the communication of 18 April 2007 on the tripartite consultations which have taken place on this subject. The Committee finally notes the ACTU comments dated 14 September 2007 on this subject, as well as the Government's communication of 9 November 2007 indicating that the upcoming elections prevent it from responding to the ACTU comments at this time. ***It requests the Government to provide its observations at the appropriate time.***

The Committee recalls that in June 2006 the Conference Committee had requested the Government to: (i) provide a detailed report to this Committee for examination in 2006 on the impact of the amendments introduced by the Work Choices Act to the WR Act on the Government's obligation to ensure respect for freedom of association both in law and in practice; (ii) engage in full and frank consultations with the representative employers' and workers' organizations with respect to all the matters raised during the debate and to report back to this Committee in this regard. In previous communications, the Government had announced the conclusion of a tripartite agreement between the Government, ACTU and the Australian Chamber of Commerce and Industry (ACCI) on the following process: the Government would provide a report to this Committee focusing on key issues identified by the social partners, i.e. the level and substance of bargaining rights and the right to strike; the ACCI and ACTU would provide separate comments on the Government's report, once submitted to the Committee and copied to them; the report and observations of the Committee would then be used as a basis for further tripartite consultations. However, as explained by the Government in subsequent communications, it was not possible to provide a report to the Committee on time for examination in 2006 due to a range of factors. The Committee further notes that in its report of 5 October 2007, the Government provides a summary record of the consultations held with the social partners on 20 August 2007. The Committee observes from the records that the consultations did not lead to any new element as all sides appear to maintain their respective positions. ***The Committee requests the Government to continue the consultation process so as to allow sufficient time for the parties to discuss their views in full with a view to eventually reaching commonly acceptable solutions, and to provide information on this issue in its next report.***

*Article 3 of the Convention. Right to strike.* The Committee's previous comments concerned numerous discrepancies between the provisions of the WR Act – as amended by the Work Choices Act – and the Convention. In particular, the Committee had raised the need to amend the following provisions of the WR Act with a view to bringing them into conformity with the Convention: provisions which lift the protection of industrial action in support of: multiple business agreements (section 423(1)(b)(i)); "pattern bargaining" (section 439); secondary boycotts and generally 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 (sections 508 of the WR Act); and provisions which prohibit 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). Finally, the Committee had raised 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 and section 30K of the Crimes Act 1914, prohibiting 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 Government provides detailed information on the economic justification of the provisions in question which are the result of successive reforms of the workplace relations framework since 1996. The

aim of these reforms has been, according to the Government, to promote more jobs and better pay through improvements in productivity so as to maintain Australia's economic prosperity and strength. The Government states that, as a result, real wages have grown by 21.5 per cent since 1996. The reforms ensured that the primary focus of the workplace relations system is agreement-making at the workplace level, as an increased emphasis on direct bargaining between employers and workers is key to greater productivity. The Committee notes that, according to the Government, accepting the Committee's comments on the need to lift restrictions over industrial action in case of multiple-business agreements (section 423(1)(b)(i)), pattern bargaining (section 439), or secondary boycotts and generally sympathy strikes (section 438) would have the effect of diminishing the focus of the entire system on agreement-making at the workplace level and would in certain respects be unfair to the employer who has reached agreement with its staff but might be subject to industrial action aimed at other employers. Moreover, the provisions on "prohibited content" (sections 356 and 436 of the WR Act in connection with the Workplace Relations Regulations 2006) largely represent, according to the Government, a continuation of the limits that the Australian workplace relations system has always placed on the content of binding industrial instruments, which should be limited to matters pertaining to the relations between employers and employees, to the exclusion of academic, political or social matters. Furthermore, the provisions which lift the protection of industrial action in support of strike pay (section 508 of the WR Act) are reasonable. The provisions prohibiting 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) do not lead to a blanket prohibition of industrial action; since the commencement of the Work Choices Act reforms in March 2006 there have been only eight applications seeking suspension or termination of a bargaining period and the bargaining period was terminated in only three of these instances. Finally, with regard to sections 30J and 30K of the Crimes Act, 1914 (prohibition of industrial action threatening transport, trade and commerce), the Government indicates that the repeal of these sections remains under consideration, but as no action has been taken under the relevant sections of the Crimes Act for over 50 years, any such amendment would be given low legislative priority.

The Committee notes with regret the Government's statement that it is not intending to adopt amendments along the lines of the Committee's previous comments. It also notes the statistical information provided by the Government according to which the proportion of employees who are trade union members has been steadily declining from the August 1986 figure of 45.6 per cent to the August 2006 figure of 20.3 per cent and that only 15.2 per cent of employees in the private sector are trade union members compared to 42.6 per cent in the public sector and expresses its concern as to the effect that the Work Choices Act may have on trade union membership. ***The Committee once again urges the Government to indicate in its next report the measures taken or contemplated so as to bring its law and practice into conformity with the Convention on all the points raised above and to continue to provide information on the impact of the Work Choices Act both in law and in practice on the Government's obligation to ensure respect for freedom of association.***

*Building industry.* In its previous comments, the Committee, taking note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2326 (338th Report, paragraphs 409-457), had raised the need to rectify several discrepancies between the Building and Construction Industry Improvement (BCII) Act 2005, and the Convention.

The Committee notes that in its communication of 9 October 2006, ACTU emphasizes that the BCII Act makes it practically impossible to declare a legal strike, renders virtually all forms of industrial action in the building and industrial sector unlawful and introduces severe financial penalties, injunctions and actions for uncapped damages in case of "unlawful" industrial action (unions are "deemed" legally liable for certain conduct by their members); moreover, it establishes a new enforcement agency known as the Australian Building and Construction Commission (ABCC) which is not sufficiently independent from the Government, has wide-ranging coercive powers akin to an agency charged with investigating criminal matters (capacity to compel a person to attend, produce documents and answer questions under oath without being able to refuse answers which might incriminate the witness and power to publicize "findings" against union members and officials without the guarantees of an impartial judicial procedure; on one occasion, the ABCC denied legal representation to a worker on the basis that his/her legal representative had acted for another person who had also been interrogated over the same industrial matter). According to ACTU, the ABCC has standing to bring legal proceedings in its own right, irrespective of the views of the parties to the industrial relationship, a power it exercised for instance, against 107 workers in the Perth to Mandurah New Metro City Rail construction project in Western Australia; these workers faced fines up to AU\$22,000 under the BCII Act plus 6,600 under the WR Act. Moreover, ITUC refers in its communication dated 27 August 2007 to several instances where proceedings were initiated against trade unions and individual workers for their participation in industrial action in the construction industry including a case in which a trade union meeting which ran 15 minutes too long was considered to be unlawful industrial action, and the individual workers faced the prospect of fines up to AU\$28,600 each and possible jail sentences while the unions faced penalties of up to AU\$220,000. According to ACTU, the ABCC warned trade unions through public statements not to participate in the "National day of community protest" of 15 November 2005, organized by ACTU, by reinforcing the prospect that such action would be deemed unlawful and that workers would face a real threat of prosecution by the ABCC.

The Committee takes note of the Government's position as set out in its communication of 13 July 2007 that: (i) the right to strike is not unqualified and can be subject to restrictions to be developed with regard to national conditions.

These conditions in Australia, as reported by the Royal Commission into the Building and Construction Industry and other independent reports, are that industrial action in the building and construction industry can cause more harm to more people than similar action in other industries and that, over the last 20 years, this industry has been undermined by conflict, lawlessness and inefficiency, which demonstrated an urgent need for structural and cultural reform. (ii) Consequently, the restrictions on industrial action introduced in the BCII Act are reasonable and intentionally broad so as to encompass all conduct that adversely affects the performance of building work, since both employer and employee interests are disadvantaged by strike action. Moreover, penalties are increased so as to ensure a strong deterrent against unlawful industrial action in the industry. (iii) The Government adds that it continues to provide construction employees and their unions with a qualified right to strike. The right to take protected industrial action is restricted to disputes between the parties to the employment relationship and the Government does not intend to enact provisions that would enable parties to take protected action in support of multiple-business agreements; this is, according to the Government, consistent with the Convention; employees can still protest in pursuit of broader industrial, political or economic objectives, like the 15 November 2005 national protest organized by ACTU, if they obtain first the permission of their employer to be absent from work on that day. (iv) The Government also reports that there is a consistent declining trend in trade union membership in the construction industry with only 22 per cent of construction industry employees being trade union members in August 2006. On the contrary, since the entry into force of the BCII Act, wages rose at an above-average rate, output and employment also increased while the number of working days lost to industrial dispute fell to levels consistent with other industries. Notwithstanding the positive indicators of the success of the reforms, the Government considers it necessary to maintain the existing arrangements to address the deeply entrenched culture of disregard for the law. (v) The Government adds that the ABCC is an independent regulatory body aimed to address the culture of lawlessness and intimidation evident in the building and construction industry. For that reason, it is vested with the ability to undertake legal proceedings in its own right, as an independent statutory authority. In the Australian national context, it helps the building industry participants achieve better compliance with their obligations under the Convention. More than 67 per cent of complaints received by the ABCC concern trade unions; of 59 prosecutions brought by the ABCC and concluded by 4 April 2007, 29 involved unions only, 20 involved employers only, six involved both unions and employers, two involved employees only, one involved unions, employers and employees and one involved the Victorian State government. To date, no person has been jailed as a result of any ABCC prosecution, or in relation to the exercise of the ABCC's compliance powers. The Federal Court ruled on 12 October 2006 that the decision to exclude a solicitor was lawful and reasonable in the circumstances of the case. The decision is now subject to further appeal. To date, the ABCC has used its power to publicize non-compliance with the BCII Act and the WR Act by building industry participants only once, after a work stoppage at a building site in Port Melbourne, Victoria, and the decision has not been challenged in any court by the union. With regard to the proceedings initiated by the ABCC to which ACTU refers, the Government indicates that the intervention of the ABCC was motivated by a dispute caused by continued disruptions to building work including "numerous unauthorized meetings, bans on overtime and strikes of more than two hours". Even though the parties reached a settlement on penalties amounting to AU\$150,000 to be paid by the Construction, Forestry, Mining, Energy Union (CFMEU), this settlement had to be "accepted" by a judge who decided the allocation of the amount among different branches of the CFMEU and its individual members/leaders; in addition to this penalty, a damages claim by the employer is still pending. (vi) Finally, the Government reports on the consultations with building and construction industry participants which took place on 12 December 2006 in Canberra. The Committee notes from the minutes of these consultations that all parties appeared to maintain their positions.

The Committee notes with regret the Government's statements indicating that there is no intention to amend the BCII Act, as well as the severe penalties imposed on trade unions and individual members for industrial action, including strikes lasting more than two hours, the prosecutions initiated by the ABCC which appear to be targeted on numerous occasions against trade unions and workers, and the declining rate of trade unionism in the industry which, in the Committee's view, may not be unrelated to impediments placed over collective bargaining in the BCII Act. The Committee wishes to emphasize that the exercise of the right to organize presupposes that trade unions have the right to freely organize their activities and formulate their programmes for furthering and defending the interests of workers, without interference from the authorities. *The Committee therefore once again urges the Government to indicate in its next report any measures taken or contemplated with a view to: (i) amending sections 36, 37 and 38 of the Building and Construction Industry Improvement 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) amending sections 39, 40 and 48–50 of the Act so as to eliminate any excessive impediments, penalties and sanctions against industrial action in the building and construction industry; (iii) introducing sufficient safeguards into the Act so as to ensure that the functioning of the Australian Building and Construction (ABC) Commissioner 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 ABC Commissioner's notices prior to the handing over of documents (sections 52, 53, 55, 56 and 59 of the Act); and (iv) amending section 52(6) of the Act which enables the ABC Commissioner 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 has been informed by the Government of Australia, newly elected on 24 November 2007, that it is committed to making substantial amendments to Australia's Workplace Relations Act and its legislative framework and to addressing issues the Committee has raised with regard to the Building and Construction Industry Improvement Act 2005. The Committee expresses the hope that its comments will prove useful to the Government in its deliberations on legislative revision.

[The Government is asked to report in detail in 2008.]

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

The Committee takes note of the discussion that took place at the Conference Committee on the Application of Standards in June 2006 and June 2007 and notes that, in its conclusions, the Conference Committee requested the Government to pursue full and frank consultations with the representative employers' and workers' organizations regarding the impact of the Workplace Relations Act 1996 (the WR Act) as amended by the Workplace Relations Amendment (Work Choices) Act 2005 (the Work Choices Act), on the rights afforded by the Convention, in particular regarding the promotion of the effective recognition of the right to collective bargaining, and to report to this Committee in 2007 in this regard.

The Committee notes the information provided in the Government's reports dated 22 December 2006 and 15 January, 13 July, 20 September and 5 and 18 October 2007, including the Government's observations on the comments made by the Australian Council of Trade Unions (ACTU) in a communication dated 17 May 2006, which were examined in the Committee's previous observation. The Committee also takes note of the comments made by the International Trade Union Confederation (ITUC) in a communication dated 27 August 2007 with regard to issues already raised by the Committee and the Government's reply thereto dated 18 October 2007.

On issues concerning the education industry, the Committee takes due note of the Government's communication of 16 November 2006 containing the Government's observations on the comments made by the National Tertiary Education Industry Union (NTEU).

On issues concerning the building and construction industry, the Committee notes the comments made by the ACTU in communications dated 9 October 2006 on the Building and Construction Industry Improvement (BCII) Act as well as the comments made by the Trade Unions International of Workers of the Building, Wood and Building materials Industries (UITBB) in support of the ACTU submission. It further notes the Government's observations in this respect contained in a communication dated 13 July 2007 as well as the communication of 18 April 2007 on the tripartite consultations which have taken place on this subject. The Committee also notes the comments made by the ITUC in its communication dated 27 August 2007 as well as the Government's reply to certain of these comments. ***The Committee finally notes the ACTU comments dated 14 September 2007 on this subject as well as the Government's communication of 1 November 2007 indicating that the upcoming elections prevent it from responding to the ACTU comments at this time, and requests the Government to provide its observations at the appropriate time.***

A. *Federal jurisdiction.* 1. In its previous comments, the Committee raised the need to rectify the possible exclusion from protection against anti-union dismissals (section 659 of the WR Act) of the particular classes of employees covered by section 693 of the WR Act (employees "in relation to whom the operation of the provisions causes or would cause substantial problems because of: (i) their particular conditions of employment; or (ii) the size or nature of the undertaking in which they are employed"). The Committee notes that according to the Government, this section allows the Government to make regulations excluding specific classes of employees in certain limited circumstances; as no regulations have been made under this section, all Australian employees are protected from termination. The Committee notes that section 693 of the WR Act does not preclude future regulations excluding particular classes of employees from protection against anti-union dismissals. ***Recalling once again that the Convention requires that all workers be protected from anti-union dismissals, the Committee requests the Government to indicate in its next report the measures taken or contemplated with a view to amending section 693 of the WR Act so as to ensure that there is no possibility of introducing exceptions from the right to be protected against anti-union dismissal.***

2. The Committee also notes that the new section 643 introduced in the WR Act by the Work Choices Act excludes from protection against harsh, unjust or unreasonable dismissals establishments with less than 100 employees. The Committee notes that according to the ITUC, this means that around two-thirds of private sector workers have lost their right to challenge an unfair dismissal. The Committee also notes that the ITUC refers to dismissals of trade union leaders and members – including migrant workers – because of legitimate trade union activities, such as expressing concerns about health and safety issues at a company meeting, or simply joining a union. ***Noting that the Government has not provided specific replies to these comments and recalling that no one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership, and that the persons responsible for such acts should be punished, the Committee requests the Government to provide its observations on the above comments by the ITUC.***

3. In its previous comments, the Committee raised the need to repeal section 400(6) and amend sections 793 and 400(5) of the WR Act so as to ensure sufficient *protection against anti-union discrimination at the time of recruitment* and, in particular, rectify situations where offers of employment conditional on the signing of an Australian Workplace

Agreement—(AWA) (“AWA or nothing”) are considered by the courts as not amounting to duress. The Committee notes that according to the Government, section 400(6) which was recently introduced in the WR Act by the Work Choices Act so as to explicitly provide that offering an “AWA or nothing” does not amount to duress, did nothing more than confirm the position established by the Federal Court in *Schanka v. Employment National (Administration) Pty Ltd* ([2001] FCA 579); in that case, the Federal Court of Australia held that merely offering employment conditions upon acceptance of an AWA was not duress because an employee remained free to refuse that employment; according to the Government, this situation is not different from an employee declining an offer of employment because the conditions of employment provided for by an award or collective agreement were either inadequate and/or unacceptable to the individual. The Government adds that, on the contrary, it was found in *Schanka* that an employer that required a transferring employee to enter into an AWA as a condition of engagement in a transmission of business situation applied illegitimate pressure and therefore, the WR Act, as amended by the Work Choices Act, introduced substantial pecuniary penalties for persons applying duress in connection with an AWA in such situations. Moreover, according to the Government, in general, offering an “AWA or nothing” does not amount to discrimination because AWAs are not anti-union and can be negotiated with workers irrespective of whether they are union members. Workers may even appoint a union official as bargaining agent to negotiate an AWA on their behalf.

The Committee once again emphasizes that workers who refuse to negotiate an AWA at the time of recruitment do not appear to enjoy adequate legal protection against acts of anti-union discrimination and that their right to join the organization of their own choosing with the objective of determining their conditions of employment through collective bargaining, does not appear to be fully protected. ***It therefore once again requests the Government to indicate in its next report the measures taken or contemplated to repeal section 400(6) of the WR Act and to amend sections 793 and 400(5) of the WR Act so as to ensure that workers are adequately protected against any discrimination at the time of recruitment related to their refusal to sign an AWA.***

4. In its previous comments, the Committee had raised the need to amend sections 423 and 431 of the WR Act so as to ensure adequate *protection 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 Government indicates that pattern bargaining and multiple business agreements would have the effect of diminishing the focus of Australia’s workplace relations system on agreement-making at the workplace level and therefore, the restrictions established in the WR Act with regard to industrial action in pursuance of pattern bargaining or multiple business agreements are reasonable. According to the Government, the jurisprudence has tightly confined the elements of the definition of “pattern bargaining” so that where a person seeks common wages and conditions in two or more proposed collective agreements, the expression “common” has been held to mean “same” or “identical”. The Full Bench of the Australian Industrial Relations Commission (AIRC) in *Trinity Garden Aged Care and another v. Australian Nursing Federation* ((PR973718), 21 August 2006) held that a range of alternative meanings of “common” such as “frequent” “similar” or “prevalent”, were too broad and would introduce a substantial element of judgement into the application of section 421(1)(b) of the WR Act, which would cause the parties to be unsure of their rights and would “substantially deny employees access to protected industrial action in the real industrial context in which common market circumstances and common bargaining objectives (such as at least maintaining the real value of wages) will naturally result in claims for similar wages and conditions”.

The Committee once again recalls that action related to the negotiation of multiple business agreements and “pattern bargaining” is legitimate trade union activity for which adequate protection should be afforded in the law and that the choice of the bargaining level should normally be made by the parties themselves. ***The Committee therefore once again requests the Government to indicate in its next report any measures taken or contemplated to amend sections 423 and 431 of the WR Act, so as to ensure that workers are adequately protected against acts of anti-union discrimination, in particular dismissal for negotiating collective agreements at whatever level deemed appropriate by the parties.***

5. In its previous comments, the Committee raised the need to establish a mechanism for the rapid and impartial examination of allegations of *acts of interference* in the context of the selection of a bargaining partner in the enterprise under section 328(a) of the WR Act, if one did not already exist. The Government indicates that it has not established such a mechanism. It adds that regardless of which union, if any, the employer chooses to make an agreement with, its employees have an ultimate right of veto over that decision because under subsection 340(2) of the WR Act, a collective agreement is approved only if it has the support of a majority of employees to which it will apply. The Committee recalls that section 328(a) of the WR Act gives an employer the widest possible discretion to select a bargaining partner as it enables it to negotiate with organizations which have “at least one member” in the enterprise. It also considers that the possibility to put the outcome of negotiations to a vote does not afford a sufficient safeguard against interference, as the employer has the ability to abandon negotiations altogether if the collective agreement is not approved, thereby excluding any real choice for the workers. ***The Committee once again requests the Government to indicate in its next report measures taken or contemplated with a view to setting up safeguards against acts of interference by the employer in the context of the selection of a bargaining partner in the enterprise.***

6. In its previous comments, the Committee raised the need to address various provisions of the WR Act which give preference to individual agreement-making over collective bargaining and in particular, amend section 348(2) of the WR

Act so as to ensure that AWAs may prevail over collective agreements only to the extent that they are more favourable to the workers.

The Committee takes note in this respect of the request made by the Conference Committee for information on the impact of the amendments introduced by the Work Choices Act into the WR Act on the Government's obligation to ensure the promotion of the effective recognition of the right to collective bargaining in law and in practice, as well as the holding of full and frank consultations with the representative employers' and workers' organizations in this regard.

The Committee notes the detailed information contained in the Government's report on the economic justification of the successive reforms of the workplace relations framework introduced since 1996. The aim of these reforms has been, according to the Government, to promote more jobs and better pay through improvements in productivity so as to maintain Australia's economic prosperity and strength. The reforms ensured that the primary focus of the workplace relations system is agreement-making at the workplace level, gave Australian employers and employees greater choice in negotiating working conditions and simplified overly prescriptive awards. The object of the WR Act does not preference one form of agreement-making over another. Rather, the WR Act enables employers and employees to choose the most appropriate form of agreement for their particular circumstances. Indeed, the latest data from the Australian Bureau of Statistics shows that more employees are employed under collective agreements than any other arrangement. In particular, as of May 2006, 41.2 per cent of employees nationally were employed under collective agreements; 19.0 per cent under awards; 34.6 per cent under individual agreements; and 5.1 per cent as working proprietors. Moreover, since the commencement of the 27 March 2006 workplace relations reforms, over 8,300 collective agreements have commenced covering about 735,000 employees. In addition to this, at the federal level, as at 31 August 2007, AWAs regulated the terms and conditions of an estimated 830,000 employees, whereas collective agreements covered some 1,773,600 employees, a fact which clearly demonstrates that collective agreements continue to be the norm in Australia. The Committee also notes that the Government reiterates its position on its obligations under *Article 4 of the Convention* to the effect that measures for the encouragement and promotion of collective bargaining should be taken only "where necessary" and only where they are "appropriate to national conditions". The Government maintains that the key components of *Article 4* are all reflected in Australia's federal workplace relations system in a way which is appropriate to national conditions. Specifically, the WR Act promotes bargaining since this constitutes one of the principal objects of the Act; it provides that bargaining is voluntary so that under the WR Act an employer cannot compel an employee to enter into an agreement; and does not prefer one form of agreement over another in light of the fact that collective bargaining continues to be the norm in Australia. The Committee also notes from the summary record of the consultations held with representatives of the ACTU and the Australian Chamber of Commerce and Industry (ACCI) on 20 August 2007 – communicated by the Government – that the consultations did not lead to any new element as all sides appear to maintain their respective positions.

The Committee notes with deep regret that the Government's report is confined to largely reiterating the position it has already stated on numerous occasions. The Committee further notes with concern that although the statistical information provided by the Government as to the number of employees covered by AWAs and collective agreements as at 31 August 2007 (830,000 and 1,773,600 employees respectively) shows that collective agreements continue to be the norm in Australia, it also shows that the number of employees covered by AWAs has increased exponentially since the introduction of these instruments in 1986 (in 2004, the Government had reported 352,531 AWAs in force in the first seven years since their introduction (1997–2003); see 2004 direct request, 75th Session). Moreover, as will be seen in the next section, one quarter of collective agreements are concluded with non-unionized workers regardless of whether trade unions exist in an enterprise. The Committee considers that these statistics are not unrelated to the legal provisions of the WR Act which promote AWAs over collective agreements negotiated with trade unions, and also correlate with the information noted under Convention No. 87, according to which trade union membership has been halved in the last 20 years. The Committee once again recalls that giving primacy to AWAs, which are individual agreements, over collective agreements, is contrary to *Article 4* of the Convention which calls for the encouragement and promotion of voluntary negotiations with a view to the adoption of collective agreements. As noted in the Committee's previous observation, although the expressions "where necessary" and subject to "national conditions" found in *Article 4* of the Convention allow for a wide range of different national practices in the implementation of measures for the encouragement and promotion of collective bargaining, they were not intended to authorize in any way the introduction of disincentives, obstacles to and even prohibitions of negotiations (as will be seen further below) amounting to a negation of the free and voluntary nature of collective bargaining enshrined in *Article 4* of the Convention.

***The Committee therefore once again requests the Government to indicate in its next report the measures taken or contemplated so as to promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements, as called for by Article 4 of the Convention. Considering that full and frank consultations with the social partners could be particularly appropriate in this regard, and while noting that the consultations already held have not led to any outcome, the Committee requests the Government to indicate in its next report any further consultations held and the impact they may have in ensuring greater respect for the effective exercise of the right to collective bargaining.***

With regard to the specific request of the Committee for an amendment to section 348(2) of the WR Act, so that AWAs prevail over collective agreements only to the extent that they are more favourable to the workers, the Committee notes that according to the comments made by the ITUC, the incentives for employers to prefer AWAs instead of collective agreements have been greatly increased as a result of the Australian Fair Pay and Conditions Standard; AWAs must now include only five minimum conditions (minimum wage, annual leave, sick leave, unpaid parental leave and maximum weekly working hours) rather than being measured against comprehensive industrial awards, meaning that they can substantially undercut employees' previous wages and working conditions. The ITUC also refers to one incident – on which the Government has not provided comments – concerning pressure put on workers to renounce their collective agreement before its expiration and sign individual contracts under which they faced pay cuts and penalties for taking sick leave or career's leave; the incident is under investigation by the Workplace Rights Advocate for the State of Victoria. The Committee also recalls the extensive comments made by the ACTU on this issue, which were summarized in the Committee's previous observation, to the effect that: (i) the previously applicable "no disadvantage test" has been replaced by a "fairness test"; (ii) AWAs can now override collective agreements irrespective of whether they were made before or after the collective agreement; (iii) award conditions can be displaced by inferior AWAs not only for new employees but also for existing employees so that their acquired rights are not protected; (iv) the primacy given to AWAs makes the purported ability of unions to bargain collectively nugatory.

The Committee notes that the Government indicates that it is difficult to objectively determine what constitutes an "inferior" AWA compared to a collective agreement, as individual agreements may contain terms and conditions which might appear at first sight to be less beneficial (variations in the payment or type of penalty rates for work undertaken at certain times) but might be accompanied by other terms considered as being superior or more generous by the employee (higher base rate of pay, more flexible working hours at the request of the employee, leave arrangements and the opportunity to receive performance-based pay and incentives) to those contained within a collective agreement. Furthermore, a fairness test has been introduced by the Australian Fair Pay and Conditions Standard to provide a safety net of minimum terms and conditions that all employers must provide, regardless of the industrial instrument applicable to employees. The Act requires the Workplace Authority to apply the fairness test to ensure that workplace agreements provide fair compensation in lieu of protected award conditions such as penalty rates; it is not the intention of the Government to have protected award conditions traded off without proper compensation.

The Committee once again recalls that employers and workers bound by a collective agreement should be able to include in contracts of employment stipulations which depart from the provisions of the collective agreement only if these stipulations are more favourable to the workers. The Committee observes that the "fairness test" presumes a comparison between two instruments of the same nature; however, AWAs are not collectively negotiated and therefore should not be subject to an evaluation of the whole instrument and all of its specific parts as if they were part of a negotiated trade-off. AWAs should rather be re-adjusted to the provisions of the collective agreement, where one is in force, so as to allow those specific conditions that are more favourable in the collectively negotiated instrument to prevail. ***The Committee therefore once again requests the Government to amend section 348(2) of the WR Act so as to ensure that AWAs may prevail over collective agreements only to the extent that they are more favourable to the workers. It further requests the Government to provide information/observations on the incident under investigation by the Workplace Rights Advocate of the State of Victoria mentioned by the ITUC in its comments.***

7. In its previous comments, the Committee raised the need to ensure that "employee collective agreements" do not undermine workers' organizations and their ability to conclude collective agreements, and that negotiations with non-unionized workers take place only where there is no representative trade union in the enterprise (sections 326–327 of the WR Act). The Committee notes the comments of the ITUC to which the Government has not responded, according to which, the WR Act does not require employers to negotiate with unions at all, even when all the employees are union members and wish to be represented in bargaining by their union. ***The Committee requests the Government to provide its observations in this regard.***

The Committee notes that according to the Government, in a context of declining trade union density, the WR Act balances the right of employees to be represented by a trade union and an employer's right to pursue their preferred form of industrial instrument. Since the implementation of the reforms in March 2006, 64 per cent of employees covered by new federal workplace agreements were covered by collective agreements (as at the end of August 2007); 49 per cent of employees were covered by agreements negotiated with unions and 15 per cent by agreements negotiated by employers directly with their employees; in other words, over three-quarters (76 per cent) of employees covered by collective agreements, made following the workplace relations reforms, are covered by union collective agreements.

The Committee once again recalls that Article 4 of the Convention refers to voluntary negotiations between employers or employers' organizations and workers' organizations. ***It therefore once again requests the Government to take measures to ensure that employee collective agreements do not undermine workers' organizations and their ability to conclude collective agreements, and to indicate in its next report the measures taken or contemplated with a view to ensuring that negotiations with non-unionized workers take place only where there is no representative trade union in the enterprise.***

8. In 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 and that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law or by decision of the administrative authority. The Government indicates that from the commencement of the workplace relations reforms in March 2006 to July 2007, there were 22 applications for authorization to make a multiple business agreement. Of these, six were approved, two were approved in principle (subject to amendments reflecting the provisions of the Fair Pay and Conditions Standard and the removal of prohibited content), five have been abandoned, and four were being assessed. Five applications were refused. Furthermore, with regard to “pattern bargaining” (which might lead to a form of multi-employer business agreement), the Government indicates that this form of bargaining is prohibited if there are no genuine attempts to negotiate an agreement which takes into account the individual circumstances of the employer in determining wages and conditions of employment.

The Committee once again recalls that the level of collective bargaining should be decided by the parties themselves and not be imposed by law and that legislative provisions which make the entry into force of a collective agreement subject to prior approval by the administrative authority at its discretion, is incompatible with the Convention and a violation of the principle of the autonomy of the parties. ***The Committee therefore once again requests the Government to indicate in its next report the measures taken or contemplated 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 the requirement of prior authorization at the discretion of the employment advocate and that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law or by decision of the administrative authority. The Committee also requests the Government to keep it informed of any regulations adopted in relation to this matter.***

9. In its previous comments, the Committee raised the need to amend the Workplace Relations Regulations 2006 so as to ensure that any “prohibited content” of collective agreements is in conformity with the principle of the free and voluntary nature of collective bargaining and to consider in this context, tripartite discussions for the preparation of collective bargaining guidelines. The Government indicates that the provisions on “prohibited content” are based on the fact that some content is not germane to the employment relationship and therefore inappropriate to be included in workplace agreements; such restrictions are a continuation of the limits that the Australian workplace relations system has always placed on the content of binding industrial instruments.

The Committee recalls that the issues listed in the Workplace Relations Regulations 2006 as constituting “prohibited content” (e.g. provisions which require a person to encourage trade union membership or indicating support for such membership; or requiring or permitting payment of a bargaining services fee; payroll deduction systems for union dues; leave to attend training provided by a trade union; paid leave to attend union meetings; process for renegotiating the agreement on its expiry; right of entry to the premises for union officials; union representation rights in disputes procedures, unless specifically requested by the employee; restrictions on the use of contractors and labour hire; forgoing of annual leave other than in accordance with the Act; encouragement or discouragement of trade union membership; allowing of industrial action; remedies for unfair dismissal; direct or indirect restrictions on AWAs); represent to a large extent the type of matters that have traditionally been subjects for collective bargaining. As a general rule, negotiation over such matters should be left to the discretion of the parties. Measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention and the free and voluntary nature of collective bargaining. In the event of doubt as to the matters falling within the purview of collective bargaining, tripartite discussions for the preparation on a voluntary basis, of guidelines for collective bargaining could be a particularly appropriate method for resolving such difficulties. ***The Committee once again requests the Government to consider tripartite discussions for the preparation of collective bargaining guidelines and to indicate in its next report any measures taken or contemplated to amend the Workplace Relations Regulations 2006, and to ensure that any “prohibited content” of collective agreements is in conformity with the principle of the free and voluntary nature of collective bargaining enshrined in Article 4 of the Convention.***

10. In its previous comments, the Committee raised the need to amend section 330 of the WR Act so as to ensure that the choice of bargaining agent, even in new businesses, may be made by the workers themselves and that they will not be prohibited from negotiating their terms and conditions of employment in the first year of their service for the employer 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 Government indicates that “employer greenfields agreements” aim at allowing the employer to unilaterally establish a set of terms and conditions of employment that will operate in new projects or enterprises for a maximum of 12 months, during which time, negotiations can take place for subsequent workplace agreements. Even if the employer determines the terms and conditions unilaterally, the “agreement” should comply with the Australian Fair Pay and Conditions Standard and is subject to a fairness test. Moreover, the Government indicates that the definition of “new business” recently introduced in the WR Act by the Work Choices Act, did not aim at expanding the definition of new business where greenfields agreements may be made, but rather clarifying a situation of legal uncertainty as to what constitutes a new business, due to various decisions taken on this subject by the AIRC. As for the concern expressed by the ACTU that employees may be moved to AWAs

during the life of greenfields agreements, the Government highlights the substantial protections contained in the WR Act against an employer applying duress to employees to make them enter into an AWA.

The Committee once again observes that the provisions on employer greenfields agreements in combination with the total exclusion of any attempts at good-faith bargaining, the much enlarged definition of new business to further include the very broad concept of “new activity”, and the greater primacy accorded to AWAs, would appear to seriously hinder the possibility of workers in such circumstances to negotiate their terms and conditions of employment. ***It therefore once again requests the Government to indicate in its next report any measures taken or contemplated to amend sections 323 and 330 of the WR Act so as to ensure that the choice of bargaining agent, even in new businesses, may be made by the workers themselves and that they will not be prohibited from negotiating their terms and conditions of employment in the first year of their service for the employer even if an employer greenfields agreement has been registered.***

B. *Building industry.* In its previous comments, the Committee, taking note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2326 (338th Report, paragraphs 409–457), had raised the need to rectify several discrepancies between the BCII Act and the Convention.

The Committee notes the comments made by the ACTU according to which the BCII Act is framed so as to operate in conjunction with the uniquely harsh measures introduced under the WR Act by the Work Choices Act. In particular, in addition to restrictions introduced in parallel with the WR Act, section 64 of the BCII Act also prohibits project agreements which have been a common feature of the building industry and are particularly suited to its nature as an efficient means of ensuring that all employees on a building site, who may be employed by a large number of small subcontractors, are covered by one agreement setting standard wages and conditions. The ACTU finally indicates that the BCII Act purports to grant 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 escapes parliamentary scrutiny. In fact, the code which has been applicable in the industry since 1999 is inconsistent with the Convention on several points as noted by the Committee in its previous comments. This system is now combined with an accreditation scheme (foreseen in Chapter 4 of the BCII Act) for contractors who wish to enter into Commonwealth contracts so as to ensure that they apply the code.

The Committee notes that according to the Government, the focus of the BCII Act is on bargaining at the enterprise or workplace level. Thus, it is not appropriate to have project agreements negotiated between head contractors and unions that impose common arrangements on any subcontractor working on the project, as the employer and employees who will be covered by a workplace agreement have the right to determine the content of their working arrangements themselves. Subcontractors providing at least 90 per cent of all labour in the building and construction industry should not be denied the possibility to determine themselves whether particular terms and conditions should apply. According to the data provided by the Government, 84 per cent of employees covered by federal collective agreements in the construction industry have been employed under union negotiated collective agreements. Since the Work Choices amendments, 68 per cent of construction employees covered by new federal collective agreements were employed under union negotiated collective agreements. The remaining 32 per cent were employed under the other agreement-making options available under the WR Act such as employee collective agreements or employer greenfields agreements. Finally, the Government indicates with regard to the absence of parliamentary scrutiny over the provisions of the National Code of Practice for the Construction Industry, that the Code can be challenged before the Federal Court and any sanctions imposed under the Code are subject to judicial review or an internal administrative review, or a complaint to the Commonwealth Ombudsperson.

***Noting with regret that the Government reiterates the same position in respect of the issues raised under both the WR Act and the BCII Act with regard to collective bargaining, the Committee once again requests the Government to indicate in its next report the measures taken or contemplated so as to bring the BCII Act into conformity with the Convention with regard to the following points: (i) the revision of section 64 of the Act so as to ensure that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law or by decision of the administrative authority; (ii) the promotion of collective bargaining, especially by ensuring that there are no financial penalties or incentives linked to undue restrictions of collective bargaining (sections 27 and 28 of the Act authorize the Minister to deny Commonwealth funding to contractors bound by a collective agreement that, although lawful, does not meet the requirements of the building code; the latter: (i) excludes a wide range of matters from the scope of collective bargaining; and (ii) contains financial incentives to ensure that AWAs may override collective agreements).***

C. *Higher education sector.* In its previous comments, the Committee noted the need to amend section 33-5 of the Higher Education Support Act 2003, and the Higher Education Workplace Relations Requirements (HEWRRs) which raise obstacles to collective bargaining similar to those raised by the WR Act and the BCII Act, by: (1) providing economic incentives to ensure that collective agreements contain exceptions in favour of AWAs; and (2) allowing for negotiations with non-unionized workers even where representative trade unions exist in the unit.

The Committee notes the Government’s reply to the comments made by the NTEU, which were summarized in the Committee’s previous observation. With regard to the relationship between collective agreements and AWAs, the Committee notes that the Government reiterates its position on its obligations under *Article 4* of the Convention. As to the

example of impediments to collective bargaining provided by the NTEU, the Government describes it as an isolated incident which bears no relevance to the HEWRRs.

*Noting with regret that the Government reiterates once again its position on questions of collective bargaining, the Committee can only request the Government once again to indicate in its next report the measures taken or contemplated to amend section 33-5 of the Higher Education Support Act 2003, and the HEWRRs which raise obstacles to collective bargaining similar to those raised by the WR Act and the BCII Act, by: (1) providing economic incentives to ensure that collective agreements contain exceptions in favour of AWAs; and (2) allowing for negotiations with non-unionized workers even where representative trade unions exist in the unit.*

The Committee has been informed by the Government of Australia, newly elected on 24 November 2007, that it is committed to making substantial amendments to Australia's workplace relations legislative framework and to addressing issues the Committee has raised with regard to the Building and Construction Industry Improvement Act 2005. The Committee expresses the hope that its comments will prove useful to the Government in its deliberations on legislative revision.

A request on another point is being addressed directly to the Government.

[The Government is asked to report in detail to the present comments in 2008.]

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

The Committee takes note of the Government's observations on the comments made by the National Tertiary Education Industry Union (NTEU).

1. *Comments concerning the eviction from trade union premises.* The Committee notes that according to the NTEU, the Higher Education Support Act in combination with the Higher Education Workplace Relations Requirements (HEWRRS) gives universities financial incentives to evict NTEU branches from their university accommodation. The Committee notes from the Government's reply, that it has not encouraged the eviction of union representatives but that universities are not permitted to use federal government funding to subsidize the operations of unions; nevertheless, universities may make office space available at market rates and this is a matter for the university to decide, in accordance with its efficient operation. The Committee recalls that according to *Article 2 of the Convention*, such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned. Although the Convention does not enumerate specific facilities, the Committee understands that the NTEU had been enjoying the use of premises in various universities. *Taking into account the consequences of the eviction of the NTEU from such premises, the Committee invites the Government to engage in dialogue with the organization concerned so as to find a commonly accepted solution and to ensure in any case, including by revising the 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.*

2. *Comments concerning negotiations with non-unionized workers' representatives.* The Committee examines the question of negotiations with non-unionized workers' representatives in its observation under Convention No. 98.

The Committee will examine the other questions raised in previous comments (2004 direct request, 75th Session) in 2009, in the framework of the regular reporting cycle.

## **Austria**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1950)**

The Committee takes note of the Government's report.

The Committee recalls that for a number of years it has been referring to the need to amend section 53(1) of Industrial Relations Act No. 22/1974 (IRA) to allow foreign workers to be eligible for election to works councils.

The Committee notes with satisfaction that the amendment to section 53(1) of the IRA was published in Federal Legislative Gazette I No. 4/2006 so as to amend section 53(1) of the IRA and extend the right to stand for election to works councils to all employees irrespective of their nationality. The Committee further notes that the amendment also extended the right to stand for election to general meetings of the Chamber of Labour to all employees irrespective of their nationality (section 20(1), Chamber of Labour Act). The amendment took effect on 14 January 2006.

## **Azerbaijan**

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

The Committee notes the Government's report.

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 28 August 2007, reiterating the 2006 comments of the International Confederation of Free Trade Unions (ICFTU) alleging: (1) the ban on strikes in the public transport sector; (2) the legislative restriction on all types of political activities by trade unions; and (3) difficulties in forming trade unions in multinational enterprises.

The Committee notes the Government's indication that according to section 281 of the Labour Code, strikes are prohibited in the railway and air transport sectors. In this connection, the Committee notes that section 233 of the Criminal Code penalizes strikes in public transport with penalties of up to three years of imprisonment. The Committee recalls that restrictions or prohibitions on the right to strike should be limited to essential services in the strict sense of the term, i.e. those the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee considers that public transport, including air and railway transport, are not essential services in the strict sense of the term. The Committee considers, however, 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 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 of public utility rather than impose an outright ban on strikes (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 160). ***The Committee therefore requests the Government to amend section 281 of the Labour Code and section 233 of the Criminal Code 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 keep it informed of the measures taken or envisaged in this respect.***

The Committee recalls that for many years, it had been requesting the Government to amend section 6(1) of the Act on Trade Unions of 1994, so as to eliminate the absolute prohibition of all types of political activity by trade unions. The Committee regrets that no measures have been taken in this respect. The Committee believes that the development of the trade union movement and the increasing recognition of its role as a social partner in its own right mean that 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., paragraph 131). ***It therefore once again requests 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 requests the Government to keep it informed of the measures taken or envisaged in this respect.***

Finally, with regard to the exercise of the right to organize in multinational enterprises, the Committee notes that the Government confirms the existence of this problem. According to the Government, only in a few such enterprises have workers been able to establish a trade union. The Government further indicates that all attempts by the Confederation of Trade Unions of Azerbaijan (CTUA) to establish social partnership with multinational companies, where labour rights are often violated bore no results. Establishment by the CTUA of a trade union organization at these companies became impossible. The Committee recalls that it is the responsibility of the Government to ensure the application of international labour Conventions concerning freedom of association. ***The Committee therefore requests 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. It requests the Government to keep it informed of the measures taken in this respect.***

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

The Committee notes the Government's report.

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 28 August 2007, referring to the issues it had raised last year. In particular, the ITUC alleges that despite the law, an effective system of collective bargaining between unions and enterprise managements has not yet been established: employers often delay negotiations, unions rarely participate in determining wage levels and are often bypassed in the conclusion of bilateral agreements between the Government and multinational enterprises. The ITUC further alleges cases of anti-union discrimination and interference which take place in multinational enterprises. The Committee notes that the Government recognizes that multinational enterprises operating in the country often violate labour and trade union rights and that the conclusion of collective labour agreements or industrial collective accords with such enterprises is not widespread. The Committee recalls that it is the responsibility of the Government to ensure the application of the Convention. ***The Committee therefore requests 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. It requests the Government to keep it informed of the measures taken in this respect. It further requests the Government to provide its observations on the remaining issues raised by the ITUC.***

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 appropriate level, the National Confederation of Entrepreneurs' (employers') Organization and the authorities. The Committee notes the Government's statement to the effect that it considers that the participation of the state bodies in

the conclusion of collective accords corresponds to the principle of tripartism. In that respect, the Committee recalls that while tripartism is 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 recalls 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' organizations and therefore, requests the Government to take measures to amend its legislation so as to bring it into conformity with the Convention.**

*The Committee 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 takes note of the Government's report and of the comments submitted by the International Trade Union Confederation (ITUC), on 28 August 2007, concerning issues already raised and the administrative authority's refusal to allow casino workers to form a union.

*Article 2 of the Convention.* (a) *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 notes the Government's statement that it is 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.**

(b) *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 notes 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 keep it informed of the measures taken or envisaged in this respect.**

*Article 3. Right of workers' and employers' organizations to draw 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 notes 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.**

*Other issues.* Noting that the Government did not communicate its observations concerning other issues raised in the previous direct request, the Committee reiterates its previous comments:

*Article 3. (a) Right of workers' and employers' organizations to draw 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 could be elected to the posts of trade union officers.*

(b) *Right to strike.* 1. 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 keep it informed of the measures taken or envisaged in this respect.***

2. 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 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 keep it informed of the measures taken or envisaged in this respect.***

3. 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 strikes and to keep it informed of the measures taken or envisaged in this respect.***

4. 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 all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike. ***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.* 1. 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.***

2. 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 takes note of the Government's report which replies to some of the comments submitted by the International Trade Union Confederation (ITUC).

*Prison guards.* The Committee notes the Government's statement to the effect that measures to allow for the organization of prison guards are currently under consideration and that it is envisaged to review the relevant provision. ***The Committee hopes that, as the Government stated that amendments to the Industrial Relations Act (IRA) were***

*under review, the future legislation will recognize prison guards' right to organize and to collective bargaining. The Committee asks the Government to keep it informed in this regard.*

*Fire brigade workers.* The Committee further notes the Government's view that, as far as the fire brigade is concerned, it is not desirable that its members be allowed to organize in view of the fact that it consists exclusively of police officers, i.e. members of a disciplined force, who double as trained firefighters. ***The Committee requests the Government to clarify whether they are police agents which also have functions of firefighters or whether they are exclusively firefighters covered by police status.***

*Other questions.* The Committee regrets to note that the Government has 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 hopes that the future legislation will guarantee an adequate protection against acts of interference and requests the Government to keep it informed in this respect.***

*Representativeness for collective bargaining.* The Committee also takes 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 adds that the Government has failed to honour industrial agreements. ***The Committee requests the Government to send its comments on the ITUC's observations.***

***The Committee requests the Government to address, in its next report, all the points mentioned and hopes that it will be soon in a position to note significant improvements in the legislation.***

## Bangladesh

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

The Committee notes the Government's report and its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), in 2006. It also takes note of the adoption of the Bangladesh Labour Act, 2006, which replaced the Industrial Relations Ordinance, 1969, and on which it comments further below.

The Committee also notes the comments sent by the ITUC in a communication dated 27 August 2007 with regard to legislative issues already raised by the Committee and serious allegations of civil rights violations committed in 2006: (i) the killing of a striker by the police on 23 May 2006 in the context of a strike in the garment sector at Gazipur, which led to a riot on the same day, in particular in the Savar EPZ and the districts of Uttara, Mirpur, Kafrul, Old Dhaka, and Tejgaon; according to the ITUC, the riot was followed by a harsh crackdown by the army's rapid action battalion with hundreds of workers arrested; (ii) the raiding of the offices of the Bangladesh Independent Garment Workers' Union Federation (BIGUF) on the same day (23 May 2006), the arrest of two BIGUF union organizers (Rashedul Alom Faju and Rebecca Khatun) and an office staff person (Minara) and their physical abuse while in police custody; their subsequent charging with destruction of property, vandalism and other charges connected to the labour unrest of that day; (iii) the arrest on the same day (23 May 2006) of Moshrefa Mishu, President of the Garment Workers' Union Forum and her detention for five days (allowed bail on 26 May) and the filing of 19 charges against her in connection with the same events; (iv) the arrest on 13 October 2006 of Chandon, International Secretary of BIGUF and his interrogation throughout the night about BIGUF's activities to organize workers in the EPZs; (v) police harassment against the American Center for International Labor Solidarity, set up by AFL-CIO, after publishing a pamphlet for EPZ workers; (vi) the arrest of three top leaders of the Bangladesh Cha Sramik Union (BCSU) on 24 March 2006 on charges which had already been investigated and found groundless the year before (released on bail on 13 April 2006) and brutal dispersion by the police of the BCSU members gathered outside the police station; (vii) assault against and serious injury of Roy Ramesh Chandra, General Secretary of the Bangladesh National Council of Textile, Garment and Leather Workers and an executive committee member of ITGLWF-TWARO on 14 April 2006; (viii) shots fired on 10 May 2006 against Mohammed Firoz Mia, President of the Bangladesh Telejogajog Sramik Karmochari Union which represents workers at the Bangladesh Telephone and Telegraph Board, who was actively campaigning against privatization. ***Recalling 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 requests the Government to communicate its observations on the very serious comments made by the ITUC.***

With regard to additional civil liberties violations communicated by the ICFTU in previous communications, including harassment of unions by the intelligence authorities, police violence against protesting workers, arrest of trade unionists, as well as the difficulty in establishing trade unions in the ship recycling industry, the Committee notes the Government's observations according to which trade unions have not been harassed by the law enforcement agencies but rather the law enforcement agencies were obliged to perform their duties in cases where trade union leaders leading a procession, rally or demonstration were not in control of the mob so that unruly people would start to rampage, damage property, barricade highways, etc.; moreover, although workers in any sector have the right to establish trade unions under the new Labour Law of 2006, workers in the shipbreaking sector are casual workers and do not get an opportunity to form unions, because of the limited period of their employment (connected to the breaking of a specific ship). The Committee recalls that *Article 8 of the Convention* provides that workers and their organizations, like other persons or organized collectivities, shall respect the law of the land and that the law of the land shall not be such as to impair, nor shall it be so applied so as to impair, the guarantees provided for in this Convention. In this regard, the Committee wishes to emphasize that the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace. Furthermore, the Committee recalls that, by virtue of *Article 2 of the Convention*, workers without distinction whatsoever, including casual and informal sector workers in the shipbreaking industry, shall have the right to establish and join organizations of their own choosing. ***The Committee requests the Government to indicate in its next report any 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.***

With regard to its previous comments concerning the arrest of 350 women trade unionists including the General Secretary of the JSL Women's Committee, the Committee notes from the Government's report that in 2004, in order to maintain law and order, the law enforcement agencies had to detain a few women from a mob while they were on a rampage, damaging a number of factories, barricading a highway, etc.; specific charges had been brought against them immediately after the incident as per the law of the land. The case (No. 7 of 2004) is still pending and a copy of judicial decisions may be communicated to the Committee as and when pronounced. ***The Committee requests the Government to communicate details as to 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 to provide a copy of all judicial decisions taken in this matter. Moreover, noting with regret that the Government does not provide any information on the registration of Immaculate (Pvt.) Ltd Sramik Union despite previous requests to this effect, the Committee once again requests the Government to report on the measures taken to ensure the prompt registration of the union.***

The Committee further recalls that its previous comments concerned the following issues:

1. *Right to organize in export processing zones (EPZs)*. The Committee recalls that the EPZ Workers' Associations and Industrial Relations Act, 2004, contains numerous and significant restrictions and delays in relation to the right to organize in EPZs and in particular: (i) contained a blanket denial of the right to organize in EPZs until 31 October 2006 after which workers' associations may be established (section 13(1)); the Committee notes that this deadline has been met and takes note of the latest communication of the ITUC, according to which, on 1 November 2006, workers had the right to apply to form workers' associations but the Bangladesh Export Processing Zones Authority (BEPZA) failed to devise and provide the prescribed form needed by the workers to this effect, thus preventing in practice the establishment of such associations; (ii) 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 24); (iii) provides that there can be no more than one workers' association per industrial unit (section 25(1)); (iv) establishes 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 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 sections 14, 15, 17 and 20); (v) confers excessive powers of approval of the constitution drafting committee to the Executive Chairperson of the BEPZA (section 17(2)); (vi) 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 16); (vii) 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 (section 35); (viii) provides 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) (section 36(1)(c), (e)–(h) and 42(1)(a)); (ix) establishes a total prohibition of industrial action in EPZs until 31 October 2008 (section 88(1) and (2)); (x) 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 18(2)); (xi) 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 54(3) and (4)); (xii) 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(1)); (xiii) prohibits a federation from affiliating in any manner with federations in other EPZs and beyond EPZs (section 32(3)); and (xiv) does 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 shall be determined by the BEPZA, etc. – sections 5(6) and (7), 28(1), 29, 32(4)). ***Noting that the Government's report does not provide any new information in respect of the above, the Committee once again requests the Government to take the necessary measures to amend the EPZ Workers' Associations and Industrial Relations Act so as to bring it into conformity with the Convention and to provide detailed information in its next report in this respect. It also requests the Government to provide its observations on the comments made by the ICFTU concerning obstacles to the establishment of workers' associations in EPZs after 1 November 2006 and to provide statistical information on the number of workers' associations established in the EPZs after that date.***

2. *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. It now notes the adoption of the Bangladesh Labour Act, 2006 (the Labour Act) which replaced the Industrial Relations Ordinance, 1969 (section 353(1)(x)).

The Committee notes with deep regret that the new Act does not contain any improvements in relation to the previous legislation and in certain regards contains even further restrictions which run against the provisions of the Convention. Thus, the Committee notes the following:

- 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 fire-fighting 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; ***in case any of the above sectors are already covered by existing legislation, the Committee requests the Government to provide information in this respect;***
- 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 seamen 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 seamen 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 requests the Government to indicate in its next report the measures taken or contemplated so as to bring the Labour Act, 2006 into full conformity with the provisions of the Convention.***

The Committee also notes that it is not clear from the provisions of the Labour Act whether Rule 10 of the Industrial Relations Rules, 1977 (IRO) which previously granted the Registrar of Trade Unions overly broad authority to enter trade union offices, inspect documents, etc., without judicial review, has been repealed. It would appear from section 353(2)(a) that the rule remains in force, as the section in question provides that any rule under any provision of the repealed laws (including the IRO) shall have effect until altered, amended, rescinded or repealed, so far as it is not inconsistent with the provisions of the Labour Act, 2006. ***The Committee requests the Government to indicate in its next report whether Rule 10 of the Industrial Relations Rules, 1977 has been repealed by the entry into force of the Labour Act, 2006 and, if not, to indicate the measures taken or contemplated with a view to its repeal or amendment.***

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

The Committee notes the Government's report as well as its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), in 2006.

The Committee further notes the entry into force of the Labour Act 2006, which replaced the Industrial Relations Ordinance 1969 (IRO). It also notes with regret however, that the new law does not appear to contain any significant improvement in relation to the Committee's previous comments.

1. *Article 1 of the Convention. Protection of workers in export processing zones (EPZs) against anti-union discrimination.* In its previous comments, the Committee, recalling the request by the Conference Committee on the Application of Standards in June 2006 for full information on the situation of workers in EPZs who, for more than 20 years, have not enjoyed the rights set out in the Convention, requested the Government to take all necessary measures to eliminate the obstacles to the exercise of trade union rights in law and in practice in EPZs and to provide statistics on the number of complaints of anti-union discrimination and of collective agreements concluded in EPZs. The Committee notes from the Government's report that nowadays the people of Bangladesh enjoy the highest freedom to form associations and engage in collective bargaining as the new Labour Act of 2006 enables workers without distinction whatsoever, to form trade unions and therefore, to raise industrial disputes and to go to the court for redress of termination for trade union activities (sections 182 and 176); moreover, through the EPZ Workers' Association and Industrial Relations Act 2004, the Government is taking all measures to keep a sound industrial situation in EPZs.

The Committee notes the latest comments received from the ITUC, in a communication dated 27 August 2007, with regard to serious violations of *Article 1* of the Convention in EPZs in practice, in particular in the garment and textile industries. The ITUC refers to numerous instances of anti-union discrimination against workers who attempted to establish workers' associations in the EPZs since 1 November 2006 when the establishment of such associations was authorized on the basis of the EPZ Worker Association and Industrial Relations Act of 2004; in particular, the ITUC refers to dismissals and suspensions of Worker Representation and Welfare Committee (WRWC) leaders, as well as systematic harassment, intimidation and violence against such leaders and members by employers with total impunity. According to the ITUC, the Bangladesh Export Processing Zones Authority (BEPZA) has failed to protect trade unionists, thus significantly undermining the extension of associational rights to workers in EPZs. ***The Committee requests the***

*Government to send its comments on the latest observations of the ITUC dated 27 August 2007. Noting moreover that the Government has not provided the previously requested data, the Committee requests the Government to furnish statistical information on the number of anti-union discrimination complaints submitted to the competent authorities since November 2006 when workers' associations were authorized in the EPZs, and the outcome of such complaints, as well as the number of collective agreements concluded in EPZ enterprises and their coverage.*

2. *Article 2. Lack of legislative protection against acts of interference.* The Committee has been raising for a number of years the need to amend the law so as to ensure sufficient protection against acts of interference. The Committee notes from the Government's report that acts of interference envisaged in *Article 2* of the Convention are rare in Bangladesh and workers' organizations have every right to complain in this regard. Acts of interference constitute an unfair labour practice and a punishable offence under sections 195 and 196 of the Labour Act, 2006. The Committee notes that section 195 of the Labour Act 2006, which replaced the IRO, introduces certain improvements in relation to the previous legislation in that it does not explicitly authorize an employer to require that a person appointed to managerial posts cease to be a member or officer of a trade union and introduces as an unfair labour practice, any transfer of the president, general secretary, organizing secretary or treasurer of any registered trade union without their consent. However, this provision still does 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. ***The Committee once again requests the Government to indicate in its next report the measures taken or contemplated so as to adopt a specific prohibition, coupled with effective and sufficiently dissuasive sanctions, against acts of interference in the establishment and functioning of workers' organizations by employers and vice versa.***

3. *Article 4. Legal requirements to collective bargaining.* The Committee observes that section 202 of the Labour Act 2006, contains a slight amendment in relation to the previous section 22 of the IRO to the effect that if there is only one trade union in an establishment, that trade union shall be deemed to be the collective bargaining agent for the establishment without explicitly requiring any longer that the trade union in question represent at least one-third of the workers in the establishment. The Committee also notes, however, that the Labour Act maintains the old section 7(2) of the IRO (now section 179(2) of the Labour Act to which the Government refers in its report) to the effect that a trade union may only obtain registration if it represents 30 per cent of the workers in an establishment. Moreover, section 202(15) of the Labour Act reiterates the old provision of section 22(15) IRO to the effect 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. ***Noting once again that the percentage requirements set for registration of a trade union and for the recognition of a collective bargaining agent (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.***

4. *Tripartite wages commissions in the public sector.* The Committee recalls from its previous comments that it has 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 from the ICFTU's comments that, being deprived of the right to organize, workers in the public sector and state enterprises with the exception of railway, postal and telecommunication services cannot exercise the right to collective bargaining through trade unions (an issue also raised in relation to the right to organize under Convention No. 87). The Committee notes from the Government's report that tripartite commissions in which all the social partners, including representatives of workers, participate, were established to ensure uniform wages in the state-owned enterprises. The Committee once again recalls that *Article 4* of the Convention 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. ***It therefore 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.***

## Barbados

### ***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. The Committee recalls that for many years it has advised the Government to amend section 4 of the Better Security Act, 1920, according to which any person who wilfully broke 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 invoking it in a case of future strikes. ***Once***

again, the Committee strongly encourages the Government to make every effort to take the necessary action in order to amend the Act in the very near future and requests the Government to keep it informed in this respect.

Furthermore, the Committee requests the Government once again to provide information on developments in the process of reviewing legislation regarding trade union recognition which began in 1998. The Committee requests the Government to keep it informed in this respect.

Finally, the Committee takes note of the comments submitted by the International Trade Union Confederation (ITUC) on 28 August 2007 which mainly refer to issues concerning the application of Convention No. 98.

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments and to recall that *Article 1 of the Convention* guarantees workers adequate protection against acts of anti-union discrimination, in taking up employment and throughout the course of employment, including at the time of termination and covers all measures of anti-union discrimination (dismissals, demotions, transfers and other prejudicial acts). The Committee considers, moreover, that legislation prohibiting acts of discrimination is inadequate if not coupled with effective, expeditious procedures and sufficiently dissuasive sanctions to ensure their application (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 223–224). *In this connection, the Committee requests the Government to take the necessary measures to ensure that its legislation provides adequate protection against all acts of anti-union discrimination as well as adequate and dissuasive sanctions.*

The Committee also takes note of the set of comments submitted by the International Trade Union Confederation (ITUC) which refers to recognition of trade unions and anti-union discrimination. *The Committee notes that the Government in its reply only refers to a case concerning the hotel industry and requests the Government to reply to the whole set of ITUC's comments.*

## **Belarus**

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

The Committee notes the information contained in the Government's report, the conclusions of the Committee on Freedom of Association in its review of the measures taken by the Government to implement the recommendations made by the Commission of Inquiry (345th Report, approved by the Governing Body at its 298th Session) and the discussion that took place in the Conference Committee on the Application of Standards in June 2007. The Committee also takes note of the reports of the missions carried out in Belarus in January 2007 (to participate in a seminar for judges and court prosecutors' officers) and June 2007 (in response to the request made by the Conference Committee on the Application of Standards in 2007). The Committee further notes the comments made by the International Trade Union Confederation (ITUC) on the application of the Convention in law and in practice. Finally, the Committee notes from the Government's report that consultations relating to the recommendations of the Commission of Inquiry were held in Geneva in February and May 2007 between the Government's representatives and the Office.

The Committee recalls that all of its outstanding comments have raised issues directly relating to the recommendations of the Commission of Inquiry.

*Article 2 of the Convention.* The Committee recalls that in its previous comments it had noted that Presidential Decree No. 605 on certain issues of state registration of public associations and their unions (confederations) of 6 October 2006, abolished the Republican Registration Commission. It further noted that responsibility for registration now lies with the Ministry of Justice, departments of justice of the regional executive councils and the Minsk City Executive Committee, and requested the Government to keep it informed of the manner in which registration is carried out by these authorities, as well as of any practical obstacles noted in relation to the right of workers to form and join organizations of their own choosing. The Committee regrets that no information was provided by the Government in this respect, except for an indication that in 2006–07, four out of six trade unions affiliated to the Radio and Electronic Workers' Union (REWU), which submitted applications for registration, were registered. The Committee understands that two organizations remain unregistered. Furthermore, the Committee notes from the conclusions of the Committee on Freedom of Association contained in its 345th Report, that no progress had been made in respect of the Commission's recommendations to register the primary-level organizations that were the subject of the complaint. The Committee further notes that the non-registration of primary trade organizations has led to the denial of registration of three regional organizations of the Belarusian Free Trade Union (BFTU) (organizations in Mogilev, Baranovichi and Novopolotsk-Polotsk). *The Committee therefore expresses the firm hope that the Government will take all necessary measures for the immediate re-registration of these organizations both at the primary and the regional level so that these workers may exercise their right to form and join organizations of their own choosing without previous authorization. It once again further requests the Government to keep it informed of the process of registration before such bodies and to provide information on the number of organizations registered and those denied registration.*

The Committee notes the Government's indication that in order to improve legislation and practice with regard to the establishment and registration of trade unions, a draft trade union law has been prepared with the participation of the social partners and the assistance of the ILO. With the adoption of that law, Presidential Decree No. 2 of 1999 will cease to have effect. The Committee takes note of the draft law on trade unions in its May 2007 version and wishes to raise the following points.

The Committee notes that the draft provides for a simplified procedure for the establishment of trade unions at the enterprise level for unions without legal personality, which would simply be placed in the register (recorded), as opposed to those with legal personality, which must be registered. However, the practical distinction in Belarus between trade unions with and those without legal personality is not sufficiently clear to the Committee. The Committee must once again recall that, when legislation makes the acquisition of legal personality a prerequisite for the existence and functioning of organizations, the conditions for acquiring legal personality must not be such that they amount to a de facto requirement for previous authorization to establish an organization, which would be tantamount to calling into question the application of *Article 2* (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 76). ***The Committee therefore requests the Government to provide full details on the envisaged distinction between unions with legal personality and those without, as well as on the impact that this distinction would have upon the functioning of trade unions.***

The Committee further notes that the draft proposes to maintain the 10 per cent membership requirement to be registered at the enterprise level (section 15 of the draft law). ***Recalling that for a number of years it has been requesting the Government to amend this minimum membership requirement, the Committee requests the Government to take the necessary measures to lower this requirement, which it considers too high, particularly in large enterprises.***

The Committee also notes that the legal address requirement is maintained for all those enterprise-level trade unions wishing to register, as well as for all higher-level trade unions. Those trade unions at the enterprise level not seeking legal personality would need to provide a contact address. The Committee notes that the draft does not provide for a clear definition of "contact address" and "legal address". In this respect, the Committee recalls that the Commission of Inquiry had noted that the requirement of legal address has created obstacles to trade union registration due, among other reasons, to the absence of clear rules on what may be an appropriate location for an organization's legal address if the location with a qualified legal address is not provided by the employer. ***In light of the frequency with which requests for registration at all levels had been denied on the basis of an unacceptable legal address, the Committee requests the Government to take the necessary measures to ensure that any new legislation allows registration of all workers' organizations requesting registration on the basis of simplified requirements concerning the provision of a valid address, regardless of the level.***

In addition, the Committee notes that the draft law maintains a strong link between representativeness and the rights of trade unions, which had been previously criticized by the Committee, as well as by the Committee on Freedom of Association. The Committee considers that the extent of such privileges to representative unions could unduly influence the choice of organization by workers and compromise the right of workers to establish and join organizations of their own choosing (see General Survey, op. cit., paragraphs 98 and 104). The Committee further considers that the granting of such extensive privileges to representative unions combined with the uncertainty around the status that may be obtained by unions without legal personality could give rise to undue influence on the choice made by workers of the organization they wish to join. The Committee refers to the conclusions of the Committee on Freedom of Association contained in paragraph 93 of its 345th Report, where the latter recalled that on several occasions, it had advised the Government against introducing changes to the trade union legislation in respect of representativeness. It considered that before establishing the notion of representativeness, the Government should ensure an atmosphere in which trade union organizations, whether within or outside the traditional structure, are able to flourish in the country. ***The Committee, like the Committee on Freedom of Association, urges the Government to abandon this approach and to ensure that the new law on trade unions will fully and truly ensure freedom of association and the rights of all workers to form and join organizations of their choosing.***

The Committee notes that the registration (recording) procedure provided for in Chapter 3 of the draft law appears to be excessively detailed. The Committee considers that while member States remain free to provide such formalities on their legislation as appears appropriate to ensure the normal functioning of occupational organizations, the registration formalities should not impair the guarantees laid down by the Convention in practice (see General Survey, op. cit., paragraph 74). The Committee recalls that the Commission of Inquiry considered that the main problem encountered by trade unions during the registration process was the application of the legislation by the registering authorities in practice. The Committee considers that with an overly regulated registration procedure, there is a risk that the registration authorities could easily find a pretext for not registering a union. In particular, pursuant to section 21 of the draft law, the state registration may be postponed in the case of "shortcomings in the preparation of documents", which may be broadly interpreted by the registration authorities. The Committee recalls that problems of compatibility with the Convention arise when competent administrative authorities make excessive use of their discretionary powers and are encouraged to do so by the vagueness of the relevant legislation (see General Survey, op. cit., paragraph 75). ***The Committee therefore requests the Government to ensure that registration formalities are not such as to give rise, in practice, to impediments to the guarantees laid down in the Convention.***

The Committee notes the Government's indication that it had carried out consultations on the proposed draft with the social partners under the auspices of the Council for the Improvement of Legislation in the Social and Labour Spheres (Council of Experts). All interested parties, including the representatives of the Federation of Trade Unions of Belarus (FPB) and the Congress of Democratic Trade Unions (CDTU), had an opportunity to express their views on the new Law. An ILO mission, which visited Belarus in June 2007, took part in a meeting of the Council of Experts. The Government states that during the examination of the draft law on trade unions, the ILO representatives expressed the view that it would not be helpful at the present stage to introduce amendments to legislation which are not supported by all the parties involved in social dialogue. The Government adds that it was emphasized, in particular, that the text of the Trade Unions Act, as drawn up by the Government, raises a number of important and difficult questions (for example, the representativeness of trade unions), which will inevitably require time for further examination. In this regard, the ILO mission proposed that the Government consider the possibility of an alternative approach: not adopting the new law for the time being but focusing on the key issue, namely, registration of trade unions. The results of the ILO mission in Minsk were subsequently discussed by the Government. In the light of the mission's recommendations, the decision has been taken to continue with efforts to improve trade union legislation with a view to achieving consensus between the parties. The Committee notes, however, from the mission report, the serious concerns raised by the mission in respect of: (i) the issue of registration, (ii) the difference between trade unions with legal personality and those without, and (iii) the issue of representativeness. ***The Committee expresses the firm hope that the future draft law on trade unions will be further developed in full consultation with all the trade unions concerned and that the final law will be in full conformity with the provisions of the Convention. The Committee requests the Government to transmit a copy of the draft trade union law as soon as it has been finalized so that it may assess its conformity with the Convention.***

*Article 3 of the Convention.* The Committee notes that according to section 41(3) of the draft law on trade unions, officials of the relevant registration authorities and local executive and management are entitled to request and obtain information on questions relating to the statutory activities of trade unions and to examine their documents and decisions. It is not clear to the Committee whether the control over trade union activity could be conducted at any time at the discretion of the competent authorities. In this respect, it considers that supervision should be limited to the obligation of submitting periodic financial reports or to cases where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe upon the principles of freedom of association). Similarly, there is no violation of Convention No. 87 if such verification is limited to exceptional cases, for example, in order to investigate a complaint, or if there have been allegations of corruption. Both the substance and the procedure of such verifications should always be subject to review by the competent judicial authority affording the necessary guarantees of impartiality and objectivity. Problems of compatibility with the Convention arise when the law gives the authorities powers of control, which go beyond the principles set forth in the previous paragraph, for example, if the administrative authority has the power to examine the books and other documents of an organization or conduct an investigation and demand information at any time (see General Survey, op. cit., paragraphs 125 and 126). ***The Committee requests the Government to ensure that the draft law is in conformity with the above principle.***

The Committee notes with regret that no information has been provided in respect of the steps taken to amend the Law on Mass Activities and sections 388, 390, 392 and 399 of the Labour Code, and to ensure that National Bank employees may have recourse to industrial action, without penalty. The Committee must therefore once again recall that it has been asking the Government to amend these provisions for several years now. ***Considering 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, the Committee reiterates its previous requests and asks the Government to keep it informed of the measures taken in this respect.***

*Articles 3, 5 and 6 of the Convention.* The Committee regrets that no information has been supplied by the Government in respect of the measures taken to amend section 388 of the Labour Code, which prohibits strikers from receiving financial assistance from foreign persons, and Decree No. 24 concerning the use of foreign gratuitous aid, so that workers' and employers' organizations may effectively organize their administration and activities and benefit from assistance from international organizations of workers and employers. The Committee notes the Government's indication that Decree No. 24 does not prohibit receiving foreign aid, including from international trade unions, but only provides for conditions of its use and for the procedure of its registration. The Government reiterates that the provision in the Decree for dissolution of a trade union in case of violation has never been used; thus there is no basis for amending the existing procedure of receiving foreign aid. The Committee must recall that it does not consider that the fact that the dissolution provision has not been used can lead to the conclusion that trade union activities have not been hindered, as the mere existence of this prohibition and its legal consequences are sufficient to hinder trade unions from using financial assistance in this manner. ***The Committee must therefore reiterate that restrictions on the use of foreign aid for legitimate trade union activities is contrary to the right of national workers' and employers' organizations to receive financial assistance from international workers' and employers' organizations in pursuit of these aims and once again requests the Government to take the necessary measures to amend both Decree No. 24 and section 388 of the Labour Code so that workers' organizations are not prohibited to use such aid to support industrial action or any other legitimate activity.***

The Committee considers that the current situation in Belarus remains far from ensuring full respect for freedom of association and the application of the provisions of the Convention. *Noting the indications made by the Government in its report that it would continue with its efforts to implement the recommendations of the Commission of Inquiry and would actively involve the social partners and seek cooperation with the Office in that process, the Committee expresses the firm hope that the Government will take the necessary steps for the full implementation of the recommendations of the Commission of Inquiry without delay and will ensure that any new legislation in the field of trade union rights is in full conformity with the provisions of the Convention.*

*It further expresses the firm hope that any acts of interference by the public authorities in the internal activities of trade unions will be publicly condemned.*

*The Committee requests the Government to respond to the comments made by the ITUC dated 3 October 2007.*

[The Government is asked to supply full particulars to the Conference at its 97th Session.]

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

The Committee notes the information contained in the Government's report, the conclusions of the Committee on Freedom of Association in its review of the measures taken by the Government to implement the recommendations made by the Commission of Inquiry (345th Report, approved by the Governing Body at its 298th Session) and the discussion that took place in the Conference Committee on the Application of Standards in June 2007. The Committee also takes note of the report of the mission carried out in Belarus in June 2007, in response to the requests made by the Conference Committee on the Application of Standards in 2007. The Committee further notes the comments made by the International Trade Union Confederation (ITUC) on the application of the Convention in law and in practice. Finally, the Committee notes from the Government's report that consultations relating to the recommendations of the Commission of Inquiry were held in Geneva in February and May 2007 between the Government's representatives and the Office.

*Articles 1, 2 and 3 of the Convention.* In its previous comments, the Committee requested the Government to indicate the measures taken to review and redress all complaints of anti-union discrimination that had been raised in the complaint filed under article 26 of the ILO Constitution or had come to light in the examination of the follow-up given by the Government to the recommendations of the Commission of Inquiry. It further urged the Government rapidly to adopt new, improved mechanisms and procedures to ensure effective protection against all types of anti-union discrimination and to indicate the progress made in this regard.

The Committee notes with interest the Government's indication that Mr Dolbik, whose contract had not been renewed following his contacts with the Commission of Inquiry, was hired in his position of air traffic controller by the "Belaeronovigatsia" and that a three-year contract was concluded with him. *The Committee nevertheless regrets that no information was provided in respect of the other persons and therefore once again reiterates its previous request to redress their situations and to provide information as to their current contractual status.*

The Committee notes that the Government once again indicates that the current legal framework provides for adequate measures to protect citizens from acts of anti-union discrimination. The Government once again refers to the tripartite General Agreement for 2006–08 wherein it was recommended that collective agreements include provisions setting out additional guarantees for workers elected to trade union bodies. The Government further indicates that the draft Law on trade unions maintains the rights of trade union members established in the current Law on trade unions. In addition, the new Law would include a provision establishing disciplinary, administrative, criminal and other liability for violations of the rights of trade unions and their associations.

The Committee further notes the Government's indication that the Council for the Improvement of Legislation in Social/Labour Spheres (Council of Experts), which includes the representatives of the Federation of Trade Unions of Belarus (FPB) and the Congress of Democratic Trade Unions (CDTU), was assigned a role of an independent body, having the confidence of the parties concerned, to consider complaints of interference in trade union affairs, as well as the cases of workers who believe they have been subjected to anti-union discrimination (without duplicating the work of existing judicial procedures or of the prosecution services and other state supervisory bodies). The Government indicates that, at a meeting held on 25 January 2007, the Council examined a complaint brought by the Belarusian Independent Trade Union (BITU) on the situation at the "Grodno Azot" and the "Belshina" enterprises and adopted unanimous conclusions. As a result, on 2 February 2007, the dispute concerning the accession of the BITU primary organization to the collective agreement at "Grodno Azot" was settled.

While noting this information, the Committee recalls that, in its previous observation, it noted the case of the Belarusian Free Trade Union (BFTU) in which enterprise management received warnings following violations of the BFTU's rights, and requested the Government to confirm whether, following the warning, the BFTU officials have actually been allowed access to the premises of the enterprise concerned. The Committee regrets that the Government provides no information in this respect. The Committee further notes with regret from the 345th Report of the Committee on Freedom of Association new allegations of interference in trade union internal affairs, anti-union pressure and anti-union discrimination at the Mogilev Plant of Artificial Fiber ("Mogilev ZIV") and "Avtopark No. 1". In respect of the latter enterprise, the Committee notes with concern that, according to the allegations, the Prosecutor's Office refused to

investigate a complaint alleging the use of anti-union tactics by the management and that, instead of conducting proper inquiries into the matter, the Prosecutor applied to the Ministry of Justice for an opinion as to whether it was legal for workers of “Avtopark No. 1” to belong to the Radio and Electronic Workers’ Union (REWU). *The Committee requests the Government to ensure an independent investigation into the alleged instances of interference and anti-union discrimination at the “Mogilev ZIV” and “Avtopark No. 1” and to ensure that the rights of any workers who suffered anti-union discrimination in these enterprises are fully redressed. It also asks the Government to provide previously requested information with regard to the BFTU and the outcome of the discussion at the level of the Council for the Improvement of Legislation in Social/Labour Spheres of the case concerning the “Belshina” enterprise.*

Finally, the Committee notes with interest that, upon an invitation of the Government, a high-level Office mission went to Minsk to attend a seminar entitled “The issues of trade unions’ protection in the activity of Belarusian courts and prosecutor’s authorities of the Republic of Belarus” during which the conclusions and recommendations of the Commission of Inquiry were disseminated and discussed. The Committee further notes the Government’s statement that, in January 2007, the National Council for Social and Labour Issues (NCSLI) discussed the issue of collaboration between employers and unions at the enterprise level and drew the attention of representatives of employers’ and workers’ organizations to the importance of strict observance of the principle of social partnership and to the inadmissibility of interference by employers in the internal affairs of trade unions. While noting the Government’s information on the measures taken to implement the relevant recommendations of the Commission of Inquiry (seminar for judges and prosecutors, the use of the Council for the Improvement of Legislation in the Social/Labour Spheres to review complaints concerning specific enterprises and the discussion at the level of the NCSLI), in view of the recent allegations submitted to the Committee on Freedom of Association, as examined in its 345th Report, the Committee considers that the measures taken so far by the Government are insufficient. The Committee also regrets that the Government has not been able to provide any statistics relating to the cases of complaint of anti-union discrimination and the decisions rendered. *In these circumstances, the Committee once again urges the Government to pursue vigorously, on the one hand, the instructions to be given to enterprises in a more systematic and accelerated manner 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.*

## Belgium

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

The Committee notes the detailed information contained in the Government’s report. It also notes the Government’s reply to the comments made by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), on 10 August 2006 concerning dismissals of trade unionists following strikes and the adoption of a circular by the Minister of the Interior and the resulting orders with a view to limiting recourse to strike pickets. In this respect, the Committee notes the Government’s comments according to which the Labour Court has ordered the reinstatement of a trade union delegate. Moreover, according to the Government, a strike in the automobile sector was characterized by intimidation and violence. The Committee recalls that no one should be subjected to discrimination with regard to employment because of legitimate trade union activities. Moreover, the action of pickets organized in accordance with the law should not be subject to interference by the public authorities. However, the Committee has considered legitimate a legal provision that prohibited pickets from disturbing public order and threatening workers who continued to work. The Committee also notes the observations by the International Trade Union Confederation (ITUC) of 28 August 2007 relating to the same issues as the ICFTU’s communication.

The Committee recalls that its previous comments have for many years concerned the need to take measures for the adoption of objective, pre-established and detailed legislative criteria determining 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 the Government’s indication that no amendment has been made to the relevant legislation with regard to the criteria for the representativeness of the most representative organizations of employers and workers which have access to the various levels of social dialogue. This situation of socio-political consensus is based, according to the Government, on the de facto situation of the massive and undeniable representativeness of the organizations concerned. The Committee once again recalls that, irrespective of the de facto situation in each country, the determination of the most representative organization must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 97). *The Committee once again expresses the firm hope that the Government will be in a position to adopt legislative provisions establishing specific and appropriate criteria of representativeness in the very near future and it requests the Government to indicate the measures adopted in this respect in its next report.*

## Belize

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

The Committee takes note of the Government's report. It recalls that for several years it had been requesting the Government to amend the Settlement of Disputes in Essential Services Act of 1939, amended on several occasions, which empowers the authorities to refer a collective dispute to compulsory arbitration, to prohibit a strike or to terminate a strike in services that are not to be considered essential in the strict sense of the term.

The Committee notes that the Government indicates that the last amendment to the abovementioned Act was S.I. No. 117 of 1998 and that currently, the services listed under the Act as essential are:

- airports (civil aviation and airport security services);
- electricity services;
- health services;
- hospital services;
- monetary and financial services (banks, Treasury, Central Bank of Belize);
- the national fire service;
- the port authority (pilots and security services);
- postal services;
- sanitary services;
- the social security scheme administered by the Social Security Board;
- telecommunications services;
- telephone services;
- water services; and
- services in which petroleum products are sold, supplied, transported, conveyed, handled, loaded, unloaded or sold.

The Committee considers that the banking sector, civil aviation, port authority (pilots), postal services, social security scheme and petroleum sector cannot be considered as essential services in the strict sense of the term in which a strike could be prohibited. Nevertheless, the Committee considers 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 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 other 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). In the view of the Committee, such a service should meet at least two requirements. Firstly, 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 (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 161).

*The Committee requests the Government to take the necessary measures to amend the Settlement of Disputes in Essential Services Act taking into consideration the abovementioned principles and to provide information on any development in this respect in its next report.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (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 3 and 4 of the Convention.* In its previous comments, the Committee recalled that, under the provisions of section 27(2) of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act, Chapter 304, 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 therefore once again requests the Government to report on any measures taken or contemplated to amend the legislation so as to ensure that when no union covers more than 50 per cent of the workers, collective bargaining rights are granted to all the unions in this unit, at least on behalf of their own members.*

*Comments of the ICFTU.* The Committee notes that in its communication of 10 August 2006, the International Confederation of Free Trade Unions (ICFTU) indicates that the fines imposed in cases of anti-union discrimination are not sufficiently dissuasive. According to the ICFTU, cases of anti-union discrimination occur in practice in the banana plantation

sector and in export processing zones, where employers do not recognize any unions. *The Committee requests the Government to send its observations on this subject.*

The Committee is addressing a request directly to the Government on another matter.

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

## Benin

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

The Committee takes note of the information in the Government's report. It also notes the comments of 28 August 2007 of the International Trade Union Confederation (ITUC) which concern matters already raised by the Committee in its previous observation.

1. *Article 2 of the Convention. Right to form trade unions without prior authorization.* In its last observation, the Committee requested the Government to indicate the measures taken to amend the provisions of the Labour Code requiring the filing of trade unions by-laws in order to obtain legal personality from the authorities, including the Ministry of the Interior, under penalty of a fine. The Committee notes the Government's indication that its comments, particularly on the need to amend section 83 of the Labour Code will be taken into account during the present revision of the labour legislation. *The Committee trusts that the revision of the labour legislation will be completed shortly. It asks the Government to indicate in its next report all amendments made to bring the legislation into full conformity with the Convention.*

2. *Article 2. Right of workers without distinction whatsoever to form 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. In its report, the Government states that a new Merchant Navy Code is currently being considered by the National Assembly. *Noting that under section 78 of the General Regulations of Seafarers of the Republic of Benin (Act No. 98-015) all seafarers have the right to organize, the Committee hopes that the new Merchant Navy Code will likewise grant to seafarers all the guarantees laid down in the Convention and requests the Government to provide a copy of the text with its next report.*

## Bolivia

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

The Committee observes that the Government's report has not been received. It notes the comments of 28 August 2007 by the International Trade Union Confederation (ITUC), which refer to matters already raised by the Committee.

For many years, in its comments on the application of the Convention the Committee has referred to:

- the exclusion of agricultural workers from the scope of the General Labour Act of 1942 and hence from the guarantees afforded by the Convention (section 1 of the General Labour Act of 1942 and Regulatory Decree No. 224 of 23 August 1943 issued under the Act);
- the denial of the right to organize of public servants (section 104 of the Act);
- the requirement that 50 per cent of the workers in an enterprise must give their agreement in order to establish a trade union if the latter is industrial (section 103 of the Act);
- the broad powers conferred upon the labour inspectorate to supervise trade union activities (section 101 of the Act);
- the requirement that candidates for trade union office must be Bolivian (section 138 of the Regulatory Decree) and permanent employees in the enterprise (sections 6(c) and 7 of Legislative Decree No. 2565 of June 1951);
- the possibility of dissolving trade unions by administrative decision (section 129 of the Regulatory Decree);
- restrictions on the right to strike: (i) majority of three-quarters of the workers in order to call a strike (section 114 of the Act and section 159 of the Regulatory Decree); (ii) the unlawfulness of general and sympathy strikes, subject to penal sanctions (sections 1 and 2 of Legislative Decree No. 2565); (iii) the unlawfulness of strikes in the banking sector (section 1(c) of Supreme Decree No. 1959 of 1950); (iv) the possibility of imposing compulsory arbitration by decision of the Executive in order to end a strike, including in services other than those that are essential in the strict sense of the term (section 113 of the Act).

*The Committee draws attention to the gravity of these breaches of the Convention which have persisted for many years, and notes with regret that, despite assistance from the Office in 2004, there has been no progress on the issues raised. It reminds the Government that it is important to take measures to ensure that the Convention is fully applied and requests it to send information in its next report on any developments in this respect.*

[The Government is asked to reply in detail to the present comments in 2008.]

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

The Committee notes that the Government's report has not been received. It notes the comments of 28 August 2007 by the International Trade Union Confederation (ITUC), which refer to matters raised by the Committee and complain of the sluggishness of legal proceedings concerning the exercise of trade union rights. *The Committee requests the Government to send its comments on the above.*

*Articles 1, 2 and 3 of the Convention.* In its previous comments, the Committee had requested the Government to take steps to update the amount of the fines (from 1,000 to 5,000 bolivianos) established 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.

*Articles 4 and 6.* The Committee observed previously that the legislation denies public employees the right to organize and requested the Government to take steps to have it amended so that public employees not engaged in the administration of the State have the right to bargain collectively through their organizations.

*The Committee draws attention to the gravity of these breaches of the Convention which have persisted for many years, and notes with regret that, despite assistance from the Office in 2004, there has been no progress on the issues raised. It reminds the Government that it is important to take measures to ensure that the Convention is fully applied and requests it to send information in its next report on any developments in this respect.*

Lastly, because there were so few collective agreements, the Committee had asked the Government to take measures, in accordance with *Article 4* of the Convention, to encourage and promote the full development and utilization of machinery for collective bargaining between employers and their organizations and workers' organizations. *The Committee reiterates that request and asks the Government to send information on the number of collective agreements concluded and the subjects they cover.*

## **Bosnia and Herzegovina**

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

The Committee takes note of the Government's report, as well as the discussion concerning the application of the Convention which took place at the Conference Committee on the Application of Standards in June 2007. Furthermore, the Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 28 August 2007 and those made by the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH) dated 13 October 2007. *The Committee requests the Government to provide information in respect of the matters raised in these two communications in its next report.*

The Committee also takes note of the report of the mission to Bosnia and Herzegovina following the request made by the Conference Committee on the Application of Standards in June 2007. It notes with interest the cooperation extended by the Government to the mission. It observes from the mission report the multifaceted elements involved in resolving the outstanding registration matters, which arise within a highly complex political system. *It expresses the firm hope that concrete steps will be taken in the very near future, through the full commitment of all the parties concerned, so as to ensure full respect for the right to organize throughout the territory.*

*Articles 2 and 4 of the Convention.* 1. *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 noted that section 32 of the Law on the Associations and Foundations of Bosnia and Herzegovina 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 notes with interest from the Government's report the concrete steps taken by the Ministry of Justice to amend this Law taking into account the Committee's previous comments and so as to provide for a simpler and faster registration procedure with more reasonable deadlines. It notes that the pre-draft Law on this matter has now been forwarded to the Council of Ministers for consideration and the adoption of the draft Law. Due to the current stoppage of the functioning of the Council of Ministers, the Government was not in a position to indicate when consideration of the pre-draft would be completed.

The Committee recalls that legislation which makes the registration and acquisition of legal personality a prerequisite for the existence and functioning of organizations and, at the same time, does not clearly define the reasons for refusal to grant a registration request, confers on the competent authority a genuinely discretionary power which is tantamount to a requirement for previous authorization. *The Committee expresses the firm hope that the Council of Ministers will be able to conclude their review of the pre-draft to amend the Law on Associations and Foundations in the very near future so that the necessary amendments to ensure that workers and employers can freely establish organizations of their own choosing without previous authorization may be adopted shortly in the Parliament. It further hopes that the necessary amendments will be made to sections 30(2), 34 and 35 as regards dissolution or*

*cancellation of registration along the lines of its previous requests. In the meantime, it requests the Government to send a copy of the proposed amendments transmitted to the Council of Ministers so that it may examine their conformity with the Convention.*

2. *Registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH).* The Committee further recalls that in its previous observation it had noted the unreasonable period which had elapsed since the filing of a registration request by the Confederation of Independent Trade Unions of Bosnia and Herzegovina 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 the information provided in the Government's report that resolution of this matter has been stalled because the current legislation requires that any refusal to register an organization must be first reviewed by a second instance internal body called the Appeals Commission. This Commission, appointed by the Council of Ministers, has not been convened due to a lack of internal capacity. The Committee notes with interest, however, that the Ministry of Justice has undertaken concrete measures to inform the Council of Ministers of this difficulty and has emphasized the need to establish the Appeals Commission, as, in its absence, the appellants are denied a right to an effective legal remedy. In response to a request from the Council of Ministers once apprised of this situation, the Ministry of Justice drafted a proposal for the decision on the appointment of the Appeals Commission, which has been forwarded to the competent bodies for their views prior to submitting a pre-draft decision to the Council of Ministers for consideration and adoption.

The Committee must nevertheless observe with regret that the question of the registration of the SSSBiH has still not been resolved, nor has the SSSBiH been assured of an appeal process to resolve the issue. The Committee notes from the mission report that the SSSBiH's appeal to the ordinary courts had been rejected on procedural grounds, as the law required a second instance administrative appeal prior to having access to the judicial system. The Committee considers that such a situation, which has lasted for five years now, is unacceptable in that it provides no recourse for the defence of workers' basic right to organize. The Committee further notes from the mission report that the practical obstacles to registration appear to emanate from a number of different sources and for a variety of non-legal reasons. The Committee emphasizes that the right to organize is a fundamental right which must be ensured for the good of the nation as a whole and that any other considerations can be addressed within the framework of respect for this right. The Committee recalls that *Article 2* of Convention No. 87 guarantees workers the right to establish and join organizations of their own choosing. *While duly noting the current stoppage of the functioning of the Appeals Commission established by the Council of Ministers, the Committee expresses the firm hope that the necessary measures will be taken in the very near future to register the Confederation of Independent Trade Unions of Bosnia and Herzegovina. It requests the Government to indicate in its next report the progress made in this respect. Further noting with deep concern the absence of judicial recourse due to the non-functioning of the Appeals Commission for several years now, the Committee requests the Government to give serious consideration to amending the Law on Foundations and Associations so as to eliminate the requirement of a second administrative appeal step and to permit appeals directly to the judicial system.*

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

The Committee takes note of the Government's report. The Committee further notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 28 August 2007.

*Article 4 of the Convention. Measures to encourage and promote the development of voluntary negotiation between employers' and workers' organizations.* In 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 the information provided in the Government's report that it has made efforts in promotion and improvement of voluntary bargaining by the establishment of the economic and social councils at the entity level, while the mid-term development strategy 2004–07 provides for the passage of a Law on the Economic and Social Council at the state level. The Government further indicates that labour, employment and social policy is under the exclusive jurisdiction of the entities and the Brcko district and collective bargaining at state level can only be carried out in respect of employees in state institutions. While no collective agreements exist currently at the state level, a trade union of local administration, police and judicial organs has been established and will submit a recommendation to the Council of Ministers to initiate a bargaining process. *The Committee requests the Government to provide it with any available statistics on the number and coverage of collective agreements that have been concluded throughout the territory.*

The Committee is addressing a request on certain other points directly to the Government.

## **Botswana**

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

The Committee notes the Government's report. The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC), in a communication dated 28 August 2007, that refer mainly to matters previously raised by the Committee and to allegations of ongoing violations of trade union rights, primarily in the mining

sector, including the mass dismissals of strikers. ***The Committee requests the Government to provide its observations respecting the ITUC's comments, as well as those of the ICFTU contained in its previous comment.***

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 notes 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 notes 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 provide information on 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.***

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

The Committee notes the Government's report and the comments submitted by the International Trade Union Confederation (ITUC), which refer mainly to legislative issues raised in its previous observation. ***The Committee requests the Government to provide its observations on the ITUC's comments.***

The Committee recalls that it 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 Prisons Act so as to ensure that prison staff are afforded all the guarantees provided under the Convention;
- to amend its legislation by adopting specific 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;
- to repeal 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.

In this respect, the Committee notes 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 the progress made with respect to these previously raised points and expresses the firm hope that next year it would be in a position to note substantive progress.***

Finally, the Committee had noted that section 18(1)(e) of the Trade Disputes Act empowers the Industrial Court to direct the Commissioner to refer disputes before it to arbitration; section 20(3) provides on the other hand that a party to a trade dispute may make an urgent application to the Industrial Court for the determination of the dispute in question. In this respect, the Committee notes the Government's indication that the Industrial Court may refer disputes of interest to arbitration, including where one of the parties to a dispute has made an urgent application to the Industrial Court. Further noting the Government's statement that the intention of the law is to have disputes of interest resolved through arbitration, the Committee recalls that, as regards arbitration imposed by the authorities at the request of one party, it considers that it is generally contrary to the principle of the voluntary negotiation of collective agreements established in Convention No. 98, and thus the autonomy of the bargaining partners. An exception might however be made in the case of provisions which, for instance, allow workers' organizations to initiate such a procedure on their own, for the conclusion of a first collective agreement. As experience shows that first collective agreements are often one of the most difficult steps in establishing a sound bargaining relationship, these types of provisions may be said to be in the spirit of machinery and procedures which facilitate collective bargaining (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 257). The Committee recalls, moreover, that recourse to compulsory arbitration is also legitimate for disputes arising in the public service and in essential services in the strict sense of the term. ***In these circumstances, the Committee requests the Government to amend section 20 of the Trade Disputes Act in accordance with the principles noted above and to keep it informed of the progress made in this regard.***

## Brazil

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

The Committee notes the Government's report.

The Committee recalls that in its previous observation it noted the comments from the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), referring to the exclusion of collective bargaining in subcontracting enterprises; the imposition of court awards in collective bargaining at the request of a single party; the dismissal of trade union leaders in violation of their trade union immunity; the formulation of blacklists; the murder of leaders of rural workers' organizations and one trade unionist in the footwear sector. In this respect, the Committee notes that the Government: (1) states that the national legislation does not prevent workers in subcontracting enterprises from forming trade unions and, once registration has been obtained from the Ministry of Labour and Employment, they can engage in collective bargaining. Numerous service enterprise trade unions exist in the country, including those which provide services by means of subcontracting; (2) states that, by virtue of Constitutional Amendment No. 45 of 2004, the agreement of both parties is required for resorting to "dissidio coletivo" (judicial arbitration); and (3) refers to the legislative provisions which afford protection to unionized workers. The Committee observes that the Government has not supplied any information on the alleged acts of violence, and it recalls that freedom of association may only be exercised in a situation where fundamental human rights are fully respected and guaranteed, in particular those relating to human life and safety. ***The Committee requests the Government to launch investigations in this respect, with a view to clarifying the facts and imposing penalties on the perpetrators.***

*Article 4 of the Convention. Compulsory arbitration.* In its previous observation, the Committee noted that under Constitutional Amendment No. 45 of 8 December 2004 (reform of the judiciary; amendment of section 114) it was established that "dissidio coletivo" may only be resorted to if both parties agree (the judiciary may not be unilaterally called on to intervene) and requested the Government to provide information on the application of this constitutional amendment in practice. The Committee notes that the Government states that under the draft trade union reform, prepared in the context of the National Labour Forum (FNT), one of the priorities for which provision is made is the encouragement of collective bargaining at all levels and in all spheres of representation, removing the dialogue between workers and employers from the scope of the State, thereby strengthening the autonomy of the parties, and maintaining the State in its role of mediator. Under the trade union reform, labour tribunals are designed to become bodies for the voluntary settlement of disputes. The Government states 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 proposal for a preliminary draft Act on trade union relations. ***The Committee requests the Government to provide information in its next report on all progress made with regard to the draft trade union reform and, in particular, on any provisions adopted in relation to arbitration as a means of dispute settlement, and to supply statistical information on the number of collective disputes (dissidios coletivos) dealt with by the labour tribunals since the adoption of the Constitutional Amendment of 2004.***

*Right to collective bargaining in the public sector.* The Committee recalls that for several years it has been referring to the need for public employees who are not engaged in the administration of the State to have the right to collective bargaining. The Committee observes that the Government has not supplied any information in this respect. ***The Committee therefore urges the Government to provide information in its next report on any measures adopted to ensure that public employees who are not engaged in the administration of the State have the right to collective bargaining. In particular, recalling that it noted in its previous observation that the Government had indicated the existence of constitutional limitations on the public administration's freedom of action, making collective bargaining***

*in the public sector difficult, and that in June 2003, in the federal public service, the Permanent National Negotiation Board (MNNP) was formed, composed of the representation of eight ministries and all the representative bodies of federal public servants, the Committee requests the Government to indicate whether any constitutional amendments have been proposed in this regard, and to provide information on the issues addressed by the MNNP.*

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 in conflict with the orientations of the Government's economic and financial policy or the existing wages policy shall be declared null and void. The Committee notes that the Government has not supplied any information in this respect, and emphasizes 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, and 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 establishment of conditions of employment. ***The Committee once again requests the Government to take steps to repeal the aforementioned legislative provision and to inform it in its next report of any measure adopted in this respect.***

Finally, the Committee notes the comments from the ITUC, dated 28 August 2007, reiterating some of the comments previously submitted by the ICFTU concerning the application of the Convention. The ITUC also indicates that the decisions of the National Labour Forum (FNT) submitted to the National Congress were rejected and that no government initiative exists for changing trade union structures and, in addition, refers to acts of anti-union discrimination in the education sector. ***The Committee requests the Government to communicate its observations in this respect.***

The Committee is raising a number of 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 Government's report. The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 28 August 2007 that refer to matters already raised by the Committee.

*Article 3 of the Convention. Right of workers' and employers' organizations to organize their activities freely without interference by the public authorities.* 1. The Committee recalls that, on previous occasions, it had requested the Government to amend section 11(2) and (3) of the Collective Labour Disputes Settlement Act; section 11(2) provides that the decision to strike shall be taken by a simple majority of the workers of the enterprise or the unit concerned, whereas section 11(3) stipulates that the duration of the strike must be declared. The Committee takes note of the Government's statement that no amendments to these provisions have been made. ***In these circumstances, the Committee once again requests the Government to indicate the measures presently being taken or envisaged to amend section 11(2) of the Collective Labour Disputes Settlement Act to ensure that, in strike ballots, only the votes cast would be counted and the quorum would be fixed at a reasonable level, as well as to amend section 11(3) of the Act so as eliminate the obligation to notify the duration of a strike.***

2. Previously, the Committee had asked the Government to amend section 51 of the Railway Transport Act of 2000, which provides that, where industrial action is taken under the Act, workers and employers must provide the population with satisfactory transport services of no less than 50 per cent of the volume of transportation that was provided before the strike. The Committee notes the Government's indication that the Ministry of Transport had expressed the will to amend section 51 of the Act, and had proposed a modification providing that in case of a strike, the employees and the employers "shall be obliged, by a written agreement signed before the start of the strike, to assure 50 per cent of the implementation of the confirmed schedule for the movement of the trains on the day of the action". The Committee observes, in this respect, that the proposed modification preserves the 50 per cent requirement contained in section 51 of the Railway Transport Act, which, as the Committee had previously pointed out, may considerably restrict the right of railway workers to undertake industrial action. The Committee had also recalled that since the establishment of 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 public authorities. ***Noting the Government's statement that the proposed text was still being discussed by the competent institutions, the Committee once again requests the Government to take the necessary measures so as to ensure that workers' organizations may participate in negotiations on the definition and organization of a minimum service and that, where no agreement is possible, the matter will be referred to an independent body.***

3. The Committee had previously referred to the provision of compensatory guarantees for workers in the energy, communications and health sectors, whose right to strike was denied under section 16(4) of the Collective Labour Disputes Settlement Act. In this respect, the Committee notes the Government's statement that, by the amendment to the Collective Labour Disputes Settlement Act, SG No. 87/27.10.2006, the prohibition on strikes in these sectors has been

repealed; workers in the energy, communications and health sectors now enjoy the right to strike. *The Committee notes this information with interest and requests the Government to transmit a copy of SG No. 87/27.10.2006 repealing the ban on strikes with its next report.*

4. With regard to the restricting of the exercise of the right to strike by civil servants, pursuant to section 47 of the Civil Servant Act, the Committee takes note of the Government's indication that the Ministry of the State Administration and the Administrative Reform (MSAAR) maintains the position that the denial of the right to strike to civil servants is reasonable, as the interruption of their work would place the functioning of the State in danger and bear negative consequences for all sectors of public life. The Government adds that it was nevertheless considering possible legislative amendments to overcome the existing restrictions on the right to strike of civil servants, in accordance with its international obligations. *The Committee notes this information and expresses the hope that the Government would take the necessary measures to amend section 47 of the Civil Servant Act, so as to effectively guarantee the right to strike to all civil servants who cannot be considered to be exercising authority in the name of the State. The Committee requests to be kept informed of the measures taken in this respect.*

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

The Committee notes the Government's report. It further notes the comments submitted by the International Trade Union Confederation (ITUC), which refer mainly to matters previously raised by the Committee. *The Committee requests the Government to provide its observations on the ITUC's comments, 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 notes that the Government refers to section 33 of the Labour Code – which provides for the autonomy of workers' and employers' organizations in formulating their statutes, electing their representatives, and adopting their programmes of action. 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 notes 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 Confederation of the Independent Trade Unions of Bulgaria (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. While taking note of this information, the Committee nevertheless recalls 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 notes the comments of the Bulgarian Industrial Association (BIA) on the application of the Convention. The BIA states that section 52 of the Labour Code does not promote the voluntary implementation of negotiations, but rather obliges employers to negotiate with and submit information to trade unions. Furthermore, section 54 of the Labour Code obliges employers to start negotiations for the conclusion of a new collective agreement no later than three months prior to the expiry of the collective agreement in force. The BIA adds that section 51(a), (b) and (c) of the Labour Code grants workers' organizations the right to submit draft collective agreements. This same right, however, is not extended to employers' organizations. The Committee notes that the Government, in its reply to the BIA, indicates that although section 52 of the Labour Code obliges employers to negotiate with and provide relevant financial information to trade unions with a view to concluding collective agreements, the legislation does not require the parties to collective bargaining to conclude an agreement, and there are no limits imposed upon the duration of negotiations; the purpose of section 52, as such, is the promotion of collective bargaining. The Committee takes due note of the above information. ***Noting however 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.***

## Burkina Faso

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

The Committee notes the Government's report and the reply to its previous observation. It also notes the observations of the International Trade Union Confederation (ITUC) dated 28 August 2007, which relate to issues already raised by the Committee in its previous observation and report acts of intimidation and threats against the leaders of the principal national trade union federations on the grounds of their participation in a national strike on 23 and 24 May 2006, and the requisitioning of many workers. The Committee notes the Government's reply, in which it stated that it would have liked to receive more information on the allegations made before providing its reply. ***The Committee recalls that, in general terms, the rights of workers' 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 requests the Government to conduct an inquiry into these allegations.***

*Article 3 of the Convention. Powers of requisitioning.* In its previous comments, the Committee referred in particular to section 353 of the Labour Code, which provides that the competent administrative authority may, at any time, proceed to the requisitioning of workers in private enterprises and public services and establishments occupying jobs that are indispensable for the safety of persons and property, the maintenance of public order, the continuity of the public service or the satisfaction of the essential needs of the community. In this respect, the Committee indicated that it would be necessary 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, namely: (1) public servants exercising authority in the name of the State; (2) essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; and (3) in the event of an acute national crisis. In its reply, the Government contends that section 353 of the Labour Code merely establishes the principle of the requisitioning of workers in the event of a strike. However, it indicates its readiness to take into account the recommendations of the ILO in determining the list of jobs which could be covered by requisitioning in the event of a strike. ***Taking due note of this statement, the Committee requests the Government to establish by regulation the list of jobs determined under section 353 of the Labour Code and to provide this list with its next report. It trusts that the principles that it has recalled above will be taken into account in the determination of this list.***

Furthermore, in its previous observation, the Committee requested the Government to specify the provisions applicable to public servants and state employees in relation to strikes and the powers of requisitioning of the authorities. Taking into account the fact that, under the terms of section 4 of the Labour Code, officials in the public service, *inter alia*, are not governed by the provisions of the Labour Code, the Committee requested the Government to indicate whether officials in the public service who go on strike are governed by Act No. 45-60/AN of 25 July 1960 regulating the right to strike of public servants and state employees. In this respect, the Committee had recalled the need to amend sections 1 and 6 of Act No. 45-60/AN which establish, among other provisions, that, with a view to ensuring the continuity of the administration and the safety of persons and property, public servants may be required to perform their duties. The

Committee is of the opinion 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 (see above). In its reply, the Government indicates that Act No. 45-60/AN is still in force and that its revision is envisaged following revision of section 353 of the Labour Code. *The Committee takes note of this information and trusts that the Government will be in a position to inform it of the amendment or the repeal of sections 1 and 6 of Act No. 45-60/AN in the near future.*

*Taking due note of the Government's indication that it has commenced the revision of the Labour Code in September 2007, the Committee trusts that it will take the points raised above into account in this process, and more generally, in any process of the revision of labour regulations, both for the private sector and the public service. The Committee requests the Government to indicate in its next report all the amendments made and to provide copies of the new texts adopted, where appropriate.*

*The Committee takes note of the Government's indication that the provisions of the Labour Code are not explicit on trade union rights of apprentices, governed by sections 24–37 of the Labour Code. While noting that the Government refers to the provisions relating to the trade union rights of minors of at least 15 years of age contained in section 257 of the Code, the Committee suggests the Government to envisage, in the framework of revision of the Labour Code, inclusion of an explicit provision guaranteeing trade union rights to apprentices. It requests the Government to keep it informed of any measures taken in this regard.*

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

The Committee notes the Government's report and the replies to the observations made by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), in 2006.

The Committee notes with interest the information that a Directorate of Labour Relations and the Promotion of Social Dialogue has been established within the Ministry of Labour and Social Security to promote collective bargaining. It also notes that, according to the Government, this Directorate initiated dialogue between employers and workers on wages in July 2007. *The Committee requests the Government to keep it informed in this respect and to provide copies of the collective agreements in force, with an indication of the approximate number of workers covered by them (including in the bakery, road transport and media sectors, in relation to which the Committee requested information in its previous observation).*

*Article 4 of the Convention. Collective bargaining in the public sector.* The Committee takes note of Decree No. 98-375/PRES/PN/MFPDI/MFF of 15 September 1998 on the composition, functioning and competence of the advisory bodies of the public service, including the Public Service Advisory Council in relation to concertation (section 51 of Act No. 013/98/AN of 13 April 1998 respecting the public service). *The Committee requests the Government to specify the categories of public servants not exercising authority in the name of the State who enjoy the right to collective bargaining.*

## **Burundi**

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

The Committee notes the Government's report and the information provided in reply to its previous comments. The Committee also notes the observations of the International Trade Union Confederation (ITUC) received in August 2007 and relating to matters already raised by the Committee.

*Article 2 of the Convention. Right of public employees without distinction whatsoever to establish and join organizations of their own choosing.* With regard to the right to organize of magistrates, the Committee notes the Government's indication that, even though the Minister of Justice considered that the registration of the Union of Magistrates of Burundi (SYMABU) was not valid as section 14 of the Labour Code excludes magistrates from its scope, the current Government recognizes the SYMABU as a partner which it meets to discuss its claims. Moreover, the Government refers to section 33 of Law No. 1/001 of 29 February 2000 on the reform of the regulations governing magistrates, which recognizes the right to organize to magistrates, including the right to strike for professional reasons, which they exercise in accordance with the legislative provisions of the regulations governing magistrates. The Government adds that these regulations have not yet been adopted. *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.

- (a) *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.
- (b) *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. The Committee notes that the Government confines itself to indicating that the provisions to be issued under the Labour Code respecting the modalities for the exercise of the right to strike have not yet been issued. ***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 it with 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.***

In its previous observation, the Committee noted the information provided by the Confederation of Burundi Trade Unions (COSYBU) reporting grave violations of trade union rights in relation to several trade union leaders, including the President of COSYBU, and also interference in the representativeness and everyday administration of COSYBU. In addition, according to the COSYBU, workers who endeavour to organize in the private sector are threatened with dismissal or demotion by their employers. The Committee notes that the ITUC reiterates these grave allegations in its communication of 2007. The Committee notes the Government's reply indicating that the majority of COSYBU's grievances took place under previous authorities and are regrettable and that the new Government is ready to cooperate closely with trade union organizations and that the COSYBU can attest to the positive steps taken in this regard. Finally, the Government indicates that there are no pending judicial proceeding concerning the COSYBU's allegations. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that trade union organizations can exercise fully 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 keep it informed of the progress made in revising the Labour Code and recalls that technical assistance of the Office is at its disposal.***

Furthermore, a request relating to other issues is being addressed directly to the Government.

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

The Committee notes the Government's report. It also notes the comments of the International Trade Union Confederation (ITUC) received in August 2007, which refer to issues already examined and the fact that workers in the

informal sector are deprived of trade union rights. The Committee notes the Government's response to the 2006 comments of the Confederation of Trade Unions of Burundi (COSYBU) concerning the application of the Convention. **The Committee urges the Government to send its observations in response to the comments of the ITUC.**

*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 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 it 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 notes 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 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.**

## Cambodia

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

The Committee notes the Government's report, and the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 28 August 2007. The Committee further notes the discussion in the Conference Committee on the Application of Standards in 2007, and in particular that the Conference Committee had deplored the failure on the part of the Government to provide full reports to the Committee of Experts and 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 had also recalled 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 and called upon the Government to take the necessary measures to ensure respect for this fundamental principle and bring an end to impunity; to this end, it 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.

The ITUC refers to the obstruction of the activities of the Cambodian Independent Teachers' Association (CITA); the conviction, despite a lack of evidence, of union leaders Lach Sambo, Yeom Khun and Sal Koem San for the crime of

illegal confinement in connection with a strike; and the refusal by employers to comply with arbitration council orders to reinstate dismissed trade unionists. The ITUC also refers to numerous acts of harassment and violence against trade union leaders and affiliates, including the detainment by the authorities of a Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) leader, in connection with a 2006 May Day march organized by his union; as well as attacks on FTUWKC officials Chi Simun, Lem Semret, Em Chhay Tieng, Chey Rithy and Yeng Vann Yuth. Finally, the ITUC alleges the introduction of new evidence proving the innocence of the two men convicted in 2005 of the murder of Chea Vichea, president of the FTUWKC. The said evidence includes eyewitness testimony absolving the two men of the murder and testimony from the ex-Chief of the Phnom Penh police corroborating that the two men were framed for the murder. It recalls that it had, on many occasions, stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate of respect for fundamental human rights. The exercise of civil liberties in relation to trade union rights should be examined on the basis of the provisions contained in *Article 3 of Convention No. 87*, and it is in connection with this standard that the respect of certain basic human rights acquires its full importance for trade union life (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 26). The Committee deeply regrets the Government's lack of reply to the ITUC's comments, particularly in the light of the gravity of the allegations. ***In these circumstances, the Committee urges 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.***

The Committee notes that the Conference Committee had urged the Government to accept an ILO direct contacts mission in respect of the serious freedom of association matters raised. In this regard, the Committee notes the Government's communication of 2 November 2007, wherein the Government indicates that, following a high-level ILO mission to Cambodia in October, it has agreed to an ILO direct contacts mission in March or April 2008. ***The Committee notes this development with interest and expresses the firm hope that the direct contacts mission will achieve significant results with respect to the serious matters referred to above.***

The Committee is addressing a request directly to the Government.

[The Government is asked to reply in detail to the present comments in 2008.]

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

The Committee notes the Government's report. It further notes the comments submitted 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 requests the Government to provide its observations.***

*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. In this connection, the Committee notes with regret that the Government provides no information concerning this matter. ***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 keep it informed of 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 keep it informed of developments in this regard.*

## Cameroon

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

The Committee takes note of the Government's report. It notes the Government's indications replying to the observations received in 2006 from the General Confederation of Labour – Liberty of Cameroon (CGT–Liberté) and the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), which concerned restrictions on the process of establishing trade union organizations, including the requirement for government authorization, and the prohibition for unions to organize their activities within the National Centre for Studies and Experiments in Agricultural Mechanization (CENEEMA). In this respect, the Government indicates that the CENEEMA was merely reminded to comply with the obligation to register set out in the Labour Code until such time as the legislative provisions in question, which are currently being revised, are brought fully into conformity with the Convention. The Government adds that the initiation of an ILO project (PAMODEC) in 2007 will help it to address the difficulties identified and to better apply the Convention.

The Committee also notes the comments made by the General Union of Workers of Cameroon (UGTC), dated 7 August 2007, CGT–Liberté dated 27 August 2007 and the ITUC dated 28 August 2007 concerning the dismissal of 163 workers from the enterprise *DTP Terrassement* for calling a strike; the arrest and imprisonment of Barnabé Paho of the Confederation of Cameroon Trade Unions; the dismissal of Jean Marie N'Di, Secretary-General of the Federation of Health, Pharmaceutical and Allied Unions (FESPAC), due to his trade union activities; the difficulties involved in the organization of elections for staff delegates in several enterprises; and the need to amend the procedure for the registration of unions. *The Committee requests the Government to provide its comments on all these observations in its next report.*

*Article 2 of the Convention.* The Committee has been recalling for many years that Act No. 68/LF/19 of 18 November 1968, under 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, section 6(2) of the Labour Code of 1992, under which persons forming 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, are all in contradiction with *Article 2* of the Convention. With regard to the provisions of the Labour Code, the Committee notes the Government's indication, in its reply to the ICFTU's observations, that it has submitted a Bill to the National Assembly to amend the Labour Code which would replace the current system for the registration of unions by a system consisting of mere notification. It adds that the adoption of this new system would imply the elimination of penalties and/or fines in the event of the violation of the law. *The Committee trusts that the Government will be in a position to indicate in its next report the progress achieved in this respect. It also requests the Government to take the necessary measures without delay to amend Act No. 68/LF/19 so as to guarantee public servants the right to establish organizations of their own choosing without prior authorization and to provide a copy of the legislative texts in question.*

*Article 5. Prior authorization for affiliation to an international organization.* The Committee has been pointing out for several years that section 19 of Decree No. 69/DF/7 of 6 January 1969, which provides that 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", is inconsistent with *Article 5* of the Convention. Recalling that *Article 5* guarantees all occupational organizations the right to affiliate freely with international organizations of workers and employers, the Committee regrets to note that the provision in question has still not been repealed despite the assurances in this respect given by the Government in previous reports. *The Committee once again urges the Government to amend the legislation as soon as possible so as to remove the requirement of prior authorization for the affiliation of trade unions of public servants to an international organization.*

*Emphasizing that many of the issues referred to above have been raised for very many years, both by the Committee of Experts and by the Conference Committee on the Application of Standards, the Committee urges the Government to lift all obstacles to the full exercise of freedom of association without further delay by adopting the necessary amendments to the legislation and ensuring that they are given full effect in practice. The Government is requested to provide copies of all legislative texts adopted in this respect.*

### Other issues

*With regard to the situation of the trade unionist Mr B. Essiga, the Committee requests the Government to provide information in its next report on developments in the judicial procedures against the latter and to provide a copy of any ruling handed down.*

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

The Committee notes the Government's report. It also notes the comments made by the General Union of Workers of Cameroon (UGTC), dated 7 August 2007, by CGT-Liberté, dated 27 August 2007, and by the International Trade Union Confederation (ITUC), dated 28 August 2007. The Committee observes that the Government merely indicates in reply to these comments that it cannot verify at government level the allegations of anti-union discrimination in certain enterprises. It adds that, for the moment, it is adopting an attitude of neutrality to avoid being accused of interference in the internal affairs of trade unions. The Committee would like to reiterate in this respect that it is the responsibility of the Government to ensure the application of international labour Conventions concerning freedom of association which have been freely ratified and which must be respected by state authorities at all levels. *The Committee requests the Government to supply its observations in reply to comments on the lack of true collective bargaining in the country since 1996, on the dismissals and other detrimental measures which affect trade unionists on account of their activities concerning workers' representation and, more generally, on the allegations of lack of protection of trade union representatives.*

*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 section 6(2) and section 166 of the Code, which allow the imposition of fines ranging from 50,000 to 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, in breach of *Article 1* of the Convention. The Committee notes that the Government, in a communication dated 5 October 2006 in reply to the observations of the International Confederation of Free Trade Unions (ICFTU) concerning the application of Convention No. 87, states that it submitted to the National Assembly a draft act amending the Labour Code which would replace the current system of trade union registration with a system of mere declaration. It also indicates that the adoption of this new system would imply the abolition of the abovementioned sentences and/or fines. *The Committee expresses the firm hope that the Government will be in a position to indicate in its next report the progress made in repealing the abovementioned provisions, and that it will send copies of the legislative texts adopted to this end.*

## Canada

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

The Committee takes note of the Government's report. The Committee also notes the comments made by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), in a communication dated 10 August 2006 as well as the Government's reply thereto.

The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in numerous cases concerning allegations of interference into the right to organize and carry out trade union activities, including collective bargaining, in various provinces of Canada. (Cases Nos 2314 and 2333, 340th Report, paragraphs 373–432; Case No. 2324, 336th Report, paragraphs 233–284; Cases Nos 2403, 2401 and 2343, 338th Report, paragraphs 536–603; Case No. 2349, 337th Report, paragraphs 361–407; Case No. 2405, 340th Report, paragraphs 433–457, and 343rd Report, paragraphs 318–338; Case No. 2430, 343rd Report, paragraphs 339–363; and Case No. 2467, 344th Report, paragraphs 461–587).

At the same time, the Committee notes with interest from the Government's report that on 8 June 2007 the Supreme Court of Canada overruled 20 years of previous Supreme Court decisions in order to hold unanimously that freedom of association encompasses a measure of protection for collective bargaining under section 2(d) of the Canadian Charter of Rights and Freedoms (*Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, 2007 SCC 27). The Committee notes that in reaching its decision the majority of 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)” (at paragraph 72). *The Committee requests the Government to indicate in its next report the implications of the Supreme Court decision for the application of the Convention.*

The Committee recalls that its previous comments concerned the exclusion of wide categories of workers from statutory protection of freedom of association and restrictions on the right to strike in several provinces.

A. *Article 2 of the Convention. Right to organize of certain categories of workers.* 1. *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 and New Brunswick (the Alberta government indicates that this issue may be addressed in the next review of the Labour Relations Code and the New Brunswick government maintains that limiting the scope of the law to workplaces with five or more agricultural employees is fair and equitable). As for Ontario, the Committee notes from the Government's report that in December 2001, the Supreme Court of Canada declared 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 Agricultural Employees Protection Act, 2002 (AEPA), which was promulgated in June 2003 pursuant to the Supreme Court finding, gives agricultural employees the right to form or join an employees' association but does not provide a right to a statutory collective bargaining regime and maintains the exclusion of agricultural employees from the Labour Relations Act. In April 2004, the United Food and Commercial Workers (UFCW) filed an appeal challenging the constitutionality of this Act. The application was dismissed by the Superior Court on 10 January 2006. The UFCW advised that it intends to appeal the decision to the Ontario Court of Appeal; this appeal has not been heard yet. The Government adds that it is currently reviewing the impact that the subsequent decision by the Supreme Court of 8 June 2007 (see above) may have on Ontario's labour laws.

The Committee recalls once again that all workers without distinction whatsoever (with the sole possible exception of the armed forces and the police) have the right to organize under the Convention. It further notes the conclusions reached by the Conference Committee in June 2004, recalling the need to amend the legislative texts in different provinces with a view to guaranteeing the full application of the Convention in relation to the effective right of association in agriculture which has suffered from restrictions for many years. ***The Committee once again requests the Government to indicate in its next report any measures taken or contemplated by the governments of Ontario, Alberta and New Brunswick, with a view to amending their legislation so as to guarantee the right of agricultural workers to organize. It requests the Government in particular to assess the implications of the Supreme Court decisions of December 2001 (Dunmore) and June 2007 (Health Services and Support – Facilities Subsector Bargaining Association) with regard to the exclusion of agricultural employees from statutory protection of the right to organize in Ontario, Alberta and New Brunswick.***

2. (a). *Domestic workers, architects, dentists, land surveyors, lawyers and doctors (Ontario)*. The Committee recalls that, taking note of the conclusions and recommendations reached in Case No. 1900 by the Committee on Freedom of Association, it has been raising for a number of years the need to ensure that wide categories of workers in Ontario, who have been excluded from statutory protection of freedom of association under section 3(a) of the amended 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 occupationally specific regulations, to establish and join organizations of their own choosing (see Case No. 1900, 308th Report, paragraphs 139–194).

The Committee notes with regret that, according to the Ontario government, no legislative amendments are planned in this respect. With regard to domestic workers in particular, the Ontario government indicates that they have been defined narrowly by the Ontario Labour Relations Board (OLRB) so that their exclusion from statutory protection of freedom of association concerns individuals who reside with a family and provide childcare, cleaning and other domestic services, but does not include, as found by the OLRB, attendants employed to care for individuals with disabilities in their own apartments, or maintenance, dietary, infirmary and housekeeping staff employed in the residence of a religious order. With regard to professionals, such as architects, dentists, land surveyors, lawyers and doctors, the government of Ontario reiterates previously provided information and indicates that they have professional organizations that represent their interests and in some cases negotiate collectively (e.g. the Ontario Medical Association bargains on behalf of its members with the Province of Ontario on the issue of fee schedules).

The Committee recalls, from the conclusions of the Committee on Freedom of Association in Case No. 1900, that the exclusion of these categories of workers from the Labour Relations Act, 1995, 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. ***The Committee therefore once again requests the Government to indicate any measures taken or contemplated by the government of Ontario to amend section 3(a) of the amended Labour Relations Act, 1995, so as to ensure that several categories of workers (domestic workers, including those who provide childcare, cleaning and other domestic services, architects, dentists, land surveyors, lawyers and doctors) are able to benefit either from the general collective labour rights system or specific legislation which allows them to form organizations that enjoy the same rights, prerogatives and means of recourse as other workers' organizations. The Committee also requests the Government to assess the implications of the Supreme Court decisions of December 2001 (Dunmore) and June 2007 (Health Services and Support – Facilities Subsector Bargaining Association) with regard to the exclusion of the above categories of employees from statutory protection of the right to organize.***

(b). *Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan*. The Committee further notes that, according to information provided by the Government, domestic workers are excluded from legislation in the

following provinces in addition to Ontario: Alberta (section 4(2)(f) of the Labour Relations Code); New Brunswick (section 1(1) of the Industrial Relations Act); Newfoundland and Labrador, unless the employer has two or more employees (section 2(1)(x) of the Labour Relations Act); Nova Scotia, unless the employer has two or more employees (section 2(1)(x) of the Trade Union Act); and Saskatchewan, unless the employer has three or more employees (not covered if at least one of the three employees is a member of a trade union that includes as members employees of more than one employer (section 2(g) of the Trade Union Act).

The Committee also notes from information provided by the Government that the exclusion of architects, dentists, land surveyors, lawyers and doctors is not limited to Ontario; other provinces contain similar exclusions in their labour laws, which extend moreover to include engineers: Alberta (section 1(1) of the Labour Relations Code); Nova Scotia (section 2(2) of the Trade Union Act); and Prince Edward Island (section 7(2) of the Labour Act). Moreover, these workers might be excluded also in Newfoundland and Labrador and Saskatchewan if the employer has less than two or three employees respectively. The Committee finally notes that the government of Alberta indicates that it has no intention to amend these exclusions and that the professionals in question can establish associations which function in ways similar to a labour union in representing the interests of their members, including through bargaining.

***The Committee refers to the comments made above with regard to Ontario and requests the Government to indicate any measures taken or contemplated by the governments of Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan to remedy the exclusion of the above categories of workers from the statutory protection of freedom of association, and to assess the implications of the Supreme Court decisions of December 2001 (Dunmore) and June 2007 (Health Services and Support – Facilities Subsector Bargaining Association) in this regard.***

3. *Nurse practitioners (Alberta)*. The Committee's previous comments concerned the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2277 (see 333rd Report, paragraphs 240–277, and 337th Report, paragraphs 347–360) 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 in Alberta, as well as comments by the ICFTU on this issue. The Committee notes from the Government's report that there are no planned reviews of the status of nurse practitioners who constitute an emerging and important health-care occupation and play an important role, especially in rural areas, between that of a physician and a registered nurse. The Committee once again recalls that the words "without distinction whatsoever" used in *Article 2* of the Convention mean that freedom of association should be guaranteed without discrimination of any kind. ***The Committee, therefore, once again requests the Government to indicate in its next report any measures taken or contemplated by the government of Alberta to amend the Labour Relations (Regional Health Authorities Restructuring) Amendment Act so that nurse practitioners recover the right to establish and join organizations of their own choosing.***

4. *Principals, vice-principals in educational establishments and community workers (Ontario)*. The Committee further 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 (see 325th Report, paragraphs 197–215) and Case No. 1975 (see 316th Report, paragraphs 229–274, and 321st Report, paragraphs 103–118).

The Committee notes with regret that the Ontario government reiterates previously provided information and indicates that it has no plans to amend the existing legislation. ***The Committee once again requests the Government to indicate in its next report any measures taken or contemplated by the Ontario government to amend the legislation so as to guarantee to principals and vice-principals in educational establishments as well as community workers the right to establish and join organizations of their own choosing.***

5. *Public colleges part-time employees (Ontario)*. The Committee further takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2430 (see 343rd Report, paragraphs 339–363) with regard to the provisions of the Colleges Collective Bargaining Act, RSO 1990, Chapter 15 that denies all public colleges part-time employees the right to join a union for collective bargaining purposes. The Committee, following the conclusions and recommendations of the Committee on Freedom of Association, recalls that all workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed-term or as contract employees, should have the right to establish and join organizations of their own choosing. ***It requests the Government to indicate in its next report any measures taken or contemplated by the Ontario government to ensure that academic and support part-time staff in colleges of applied arts and technology fully enjoy the right to organize, as any other workers.***

6. *Education workers (Alberta)*. With regard to the right to organize of education workers in 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. In the Committee's view, these provisions 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, according to the government of Alberta, there are no plans to amend this legislation; the government adds that post-secondary employees who are not represented by a faculty association are in fact represented by a support staff union at the same institution. ***The Committee once again requests the Government to indicate in its next report any measures taken or contemplated by the Alberta government with a view to ensuring that all university staff are guaranteed the right to organize without any exceptions.***

7. *Workers in social, health and childcare services (Quebec)*. The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2333 and 2314 concerning 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. The Committee notes that the Government indicates that the issue is pending before the domestic courts and therefore it reserves its comments until a judgement has been rendered. The Committee notes 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 and hopes that, in rendering their judgement, the courts will take into account the provisions of the Convention. ***The Committee, following the recommendations made by the Committee on Freedom of Association in Cases Nos 2333 and 2314, requests the Government to indicate in its next report the outcome of the judicial proceedings under way as well as any measures taken or contemplated by the Quebec government so as to amend the provisions of the Act modifying the Act on health and social services (LQ, 2003, c.12) and the Act modifying the Act on early childhood centres and other nursery services (LQ, 2003, c.13), in order for the workers concerned to be able to benefit either from the general collective labour rights system or specific legislation which allows them to form organizations that enjoy the same rights, prerogatives and means of recourse as other workers’ organizations.***

8. *Prosecutors (Quebec)*. The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2467 (see 344th Report, paragraphs 461–587) with regard to the Prosecutors Act (as amended by the Act amending the Act respecting Attorney-General’s Prosecutors and the Labour Code, LQ 2004, c.22) which denies 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 notes that the Government does not provide specific information on this issue. ***The Committee, following the recommendations of the Committee on Freedom of Association, requests the Government to indicate in its next report measures taken or contemplated by the government of Quebec so as to ensure that prosecutors have the right to join the organization of their choice.***

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

The Committee notes with regret from the Government’s report that there are no plans to amend the legislation in Prince Edward Island, Nova Scotia and Ontario. The Ontario government indicates that teachers’ bargaining agents were identified in legislation for the first time in 1975, thus capturing existing practices at the time with the agreement of school boards and unions. The Committee once again emphasizes that, although a system in which a single bargaining agent can be accredited to represent workers in a given bargaining unit and bargain on their behalf is compatible with the Convention, a trade union monopoly established or maintained by the explicit designation by name of a trade union organization in the law is in violation of the Convention and other trade unions which have in the meantime become majority organizations should be able to request accreditation to represent workers. ***The Committee requests once again the Government to indicate any measures taken or contemplated by the governments of Prince Edward Island, Nova Scotia and Ontario to repeal from their respective legislation the designation by name of individual trade unions as bargaining agents and suggests giving consideration to a neutral reference to the most representative organization.***

C. *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, Manitoba and Ontario).

1. *British Columbia*. With respect to British Columbia, the Committee recalls that its previous comments concerned the need to repeal the provisions of Bill No. 18 (the Skill Development and Labour Statutes Amendment Act) which declared education to be an essential service, and 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 (see 330th Report, paragraphs 239–305). The Committee notes with regret from the Government’s report that there have been no measures to amend or repeal the provisions in question and that the British Columbia government continues to hold the position that teachers represent an essential service that permits children to have full access to their education throughout the school year. ***The Committee once again requests the Government to indicate in its next report any measures taken or contemplated by the British Columbia government with a view to amending the legislation so as to ensure that essential services, in which strikes may be restricted or even prohibited, are limited to those services the interruption of which could endanger the life, personal safety or health of the population and ensuring that workers in the education sector, which does not qualify as an essential service in the***

*strict sense of the term, may enjoy and exercise the right to strike without undue restrictions. The Committee suggests that the British Columbia government give consideration to establishing an effective and voluntary dispute settlement mechanism in this regard, on the basis of consultations with all organizations concerned.*

The Committee further recalls that in its previous comments concerning British Columbia it had requested information on the new collective bargaining regime for support staff in certain provincial school commissions after the repeal of an Act, which had served to end a collective dispute in these commissions, in July 2000. The Committee notes from the Government's report that the parties have subsequently successfully negotiated collective agreements.

2. *Manitoba.* With regard to Manitoba, the Committee recalls that its previous comments concerned the need to amend section 110(1) of the Public School Act which prohibits strikes by teachers. The Committee notes with regret from the Government's report that there are no plans to make amendments to the Public Schools Act at this time. The current system has existed since 1956 and had the agreement of the social partners. The Committee once again notes 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. *It 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.*

3. *Ontario.* The Committee further recalls from its previous comments concerning Ontario that it had emphasized, pursuant to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2025 (see 320th Report, paragraphs 374–414) and Case No. 2305 (see 335th Report, paragraphs 471–512), the need to consider establishing a voluntary and effective dispute prevention and resolution mechanism rather than having recourse to back-to-work legislation. It further requested the Government to ensure that recourse to arbitration for the settlement of disputes be voluntary and that such arbitration be truly independent (see 335th Report, paragraphs 505 and 512).

The Committee notes with interest from the Government's report that in addition to the fact that all bargaining agents in the education sector have the right to establish a voluntary and effective dispute prevention and resolution mechanism based on the voluntary recourse to independent arbitration machinery, the new government in Ontario has been successful in replacing a confrontational environment between the government and teachers with a collaborative one. Thus, for the first time in the history of Ontario, teacher unions and school boards settled four-year collective agreements in all 72 publicly funded school boards (for the period September 2004 to August 2008) without any strikes. In addition, the government has established an "Educational Partnership Table" in which representatives from unions and employers in the education sector as well as students, parents and school principals undertake to work toward consensus. The first meeting was held on 6 March 2004 and meetings are held on a quarterly basis. The Government has also established the Provincial Stability Commission (PSC) to assist the parties should disputes arise regarding the implementation of provisions contained in collective agreements. The Commission will maintain an environment of good will and proactively address any issues that may arise from the implementation of the four-year collective agreements; promote problem solving over formal or adversarial dispute resolution; and solve problems and develop best practices concerning teacher supervision of students to ensure student safety. As a first step, the PSC will be providing effective dispute resolution mechanisms for the parties to the 31 teacher collective agreements in the public elementary sector. Three out of six teacher bargaining agents have agreed to refer to the PSC issues around teacher supervision of students that cannot be resolved at the local level. *The Committee requests the Government to provide in its next report information on the functioning of the Educational Partnership Table and the Provincial Stability Commission as well as any other voluntary mechanisms for effective dispute prevention and resolution in the education sector.*

D. *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 to all employees within the regional health authorities, including various categories of labourers and gardeners under the Labour Relations (Regional Health Authorities Restructuring) Amendment Act. In previous comments, the Committee took note of the relevant conclusions and recommendations of the Committee on Freedom of Association in Case No. 2277 (see 333rd Report, paragraphs 240–277) as well as the comments of the ICFTU according to which this Act put an end to the right to strike for the remaining 10 per cent of health-care workers in Alberta who still had that right.

The Committee notes from the Government's report that the Act in question did not take away the right to strike for the vast majority of gardeners and labourers in the health-care sector, but rather prohibited these employees from striking as staff members of facilities on the designated hospitals list. The Committee recalls its view that gardeners and labourers do not provide essential services in the strict sense of the term. *It requests the Government to indicate in its next report all measures taken or contemplated by the Alberta government in order to ensure that those workers in the health and hospital sectors who are not providing essential services, in the strict sense of the term, are not deprived of the right to strike.*

E. *Article 3. Right to strike in the public sector (Quebec).* The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2467 (see 344th Report, paragraphs 61–587) with regard to Act 43 putting a unilateral end to negotiations in the public sector by imposing

collective agreements for a determined period, and thereby depriving the employees concerned, including teachers, of the right to strike (labour law in Quebec prohibits strikes during the term of a collective agreement); imposing severe and disproportionate sanctions in the event of an infringement of the provisions prohibiting recourse to strike action (suspension or 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, Act 43); 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, Act 43); 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, Act 43); severe penal sanctions (sections 39–40, Act 43)). The Committee notes that according to the Government, Act 43 is currently under appeal before the domestic courts. ***The Committee, following the recommendations of the Committee on Freedom of Association, requests the Government to indicate in its next report the outcome of the appeal pending on Act 43 before the domestic courts as well as any measure taken or contemplated by the government of Quebec 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 Act 43 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; (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.***

F. *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 the Manitoba government reiterates its previous position according to which the alternative dispute settlement mechanism set out in the Labour Relations Act is reasonable and justifiable; having an impartial third party settle the dispute will likely result in a fair and reasonable settlement and will bring an end to the hardships that a work stoppage creates.

Notwithstanding the effects of lengthy work stoppages, the Committee recalls 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 once again requests the Government to indicate in its next report any measures taken or contemplated by the Manitoba government to amend the Labour Relations Act so that an arbitration award may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or where both parties agree.***

## Cape Verde

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

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

*Very low number of collective agreements.* The Committee had noted that the Government has sent copies of two collective agreements (telecommunications and private security) and indicated that collective bargaining must be voluntary and that the Government's role is to promote it without forcing it. The Government added that the Office's technical assistance to strengthen the capacities of the social partners in collective bargaining techniques would contribute to improving the situation. The Government indicates that the social partners are in agreement to request this technical assistance.

***The Committee requests again the Government to continue its efforts to promote collective bargaining and hopes that the technical assistance requested by the Government with the agreement of the social partners will be provided in the near future.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very 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 Government's report and its reply to the observations made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation), on 10 August 2006.

The Committee recalls that, in its observations, the ICFTU criticized compulsory arbitration in the case of disputes not resolved by conciliation, as well as the arrest of a trade union leader and police intervention to prevent the right of assembly. In this respect, the Committee notes the Government's reply, under the terms of which: (1) the preliminary draft text of the Labour Code has taken into account the various concerns of the social partners, including those relating to compulsory arbitration in the case of disputes not resolved through conciliation; (2) with regard to the arrest of the trade union leader Noël Ramandan and his detention for one day, the Government states that there is no relation between his trade union activities and the arrest, which was the outcome of a monitoring operation initiated by the Government with a view to combating fraud in public finances; and (3) in relation to the occupation of the labour exchange by the forces of order, which prevented the holding of a trade union meeting, it indicates that this was done with the aim of taking security measures and that the reason for this intervention was to separate political activities from trade union activities. The Committee recalls that the arrest and detention of trade unionists without any charges being laid or court warrants being issued constitutes a serious violation of trade union rights, that freedom of assembly is an essential element of freedom of association and that the authorities should refrain from any interference which would restrict this right or impede its lawful exercise, unless public order is disturbed thereby or imminently endangered.

Furthermore, the Committee recalls that for several years it has been requesting the Government to amend or repeal various legislative provisions relating to restrictions on freedom of association. More specifically, the Committee requested:

- (1) the amendment of 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;
- (2) the amendment of section 11 of Order No. 81/028 respecting the Government's powers of requisition in the event of a strike when so required in the general interest and 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; and
- (3) the repeal of section 4 of Act No. 88/009, which provides that occupational trade unions formed into federations and confederations may join together in a single central national organization. On this point, the Committee notes the Government's indication that occupational trade unions formed into federations and confederations may indeed join together in a single central organization.

The Committee notes the Government's reply to the effect that an important process of reforms of the legislation, which will take into account the observations made by the Committee, has been initiated with regard to the preliminary draft of the Labour Code, the review of the general conditions of service of the public service and the revision of Order No. 81/028 and Act No. 88/009. The Committee further notes that the preliminary draft of the reform of the Labour Code has been validated by the social partners. ***The Committee hopes that the legislative reforms referred to by the Government will be adopted rapidly so as to bring the national legislation into full conformity with the Convention. The Committee requests the Government to keep it informed in its next report on any progress achieved in this respect.***

Finally, the Committee notes the observations made by the International Trade Union Confederation (ITUC) on 28 August 2007 concerning: matters already raised by the Committee, as well as the restrictions on the freedom of association of state officials engaged in positions of responsibility and persons who have lost the status of worker; the obstruction by the police of a meeting convened by the Central African Customs Union (SYNDOUCAF); and the restrictions placed by employers on trade union meetings. ***The Committee requests the Government to provide its reply to the observations of the ITUC.***

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

The Committee notes the Government's report. It notes with regret that the Government has not replied to its previous comments in which it asked the Government to:

- send its observations on the comments made by the International Trade Union Confederation (ITUC) to the effect that wages in the public sector are determined by the Government after consultation with the unions but without any negotiation. ***The Committee requests the Government to send its reply to these comments;***
- take steps to amend the legislation so that negotiations by “professional groupings” are only possible where no trade union exists. ***The Committee reminds the Government that the Convention promotes collective bargaining between employers' and workers' organizations and requests the Government once again to amend the legislation accordingly.***

***The Committee requests the Government to keep it informed of all measures taken in this regard.***

## Chad

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

The Committee notes the Government's report. It notes the observations of 28 August 2007 from the International Trade Union Confederation (ITUC) referring to the situation of unionized workers in an enterprise in the petroleum sector already raised by the Committee in its previous observation. According to the ITUC, the security forces used violence against a protest by members of the Union of Trade Unions of Chad (UST) in the petroleum sector, there were reprisals against these workers (including dismissal of UST representatives), and the UST's status as representative organization was withdrawn. The Committee reminds the Government that the rights of workers' and employers' organizations can be exercised only in a climate free from violence and from any kind of pressure or threat against the leaders and members of such organizations and that governments have a duty to enforce this principle. ***The Committee requests the Government to send its comments on these serious allegations in its next report.***

In its earlier comments the Committee has raised the following matters.

*Article 2 of the Convention. Right of workers and employers without distinction whatsoever to establish and join organizations without prior authorization.* The Committee noted previously that, according to section 294(3) of the Labour Code, fathers, mothers or guardians may oppose the right to organize of young persons under the age of 16. In its report the Government indicates that section 294(3) should be amended in the course of the complete revision of the Labour Code and its alignment with the Uniform Act of the labour law of the OHADA and in the course of implementing the recommendations adopted following the Summit of the African Union on employment and poverty reduction. ***The Committee once again expresses the hope that section 294(3) of the Labour Code will shortly be amended to ensure that minors who have access to the labour market, whether as workers or apprentices, can exercise their right to organize without parental authorization. It asks the Government to indicate all progress made in this respect in its next report.***

*Article 3. Right of workers' and employers' organizations to organize their administration and activities in full freedom.* The Committee noted previously that section 307 of the Labour Code continues to provide that the accounts and supporting documents for the financial transactions of trade unions must be submitted without delay to the labour inspector, when so requested. It pointed out that the public authorities' supervision of union finances should be confined to an obligation to submit periodic reports. In its report, the Government indicates that no labour inspectors have supervised the financial management of trade unions and, furthermore, the Director of Labour and Social Security has ordered all labour inspectors and heads of labour offices not to carry out such supervision pending amendment of section 307 of the Labour Code. ***The Committee requests the Government to send a copy of the instructions issued by the Director of Labour and Social Security on supervision of the financial transactions of trade unions, and to indicate in its next report the amendments made to section 307 of the Labour Code.***

In previous comments, the Committee asked the Government to provide information on the application in practice of Decree No. 96/PR/MFPT/94 of 29 April 1994 regulating the exercise of the right to strike in the public service. As the Committee points out, this Decree provides for a conciliation and arbitration procedure prior to the calling of a strike, and a compulsory minimum service in certain public services the interruption of which would result in extremely serious disruption of the life of the community. The Committee has pointed out before that the restriction or prohibition of the right to strike should be confined to instances where public servants exercise authority in the name of the State or to essential services in the strict sense of the term, that is services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or to acute national crises. Furthermore, 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 damage 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 other services which are of public utility. In its report, the Government indicates that the abovementioned Decree prompted such opposition that it has fallen into abeyance. It further indicates that a new draft decree to regulate the exercise of the right to strike in the public service – which will repeal the provisions of Decree No. 96/PR/MFPT/94 of 29 April 1994 – has been drafted and is currently under consideration by the Government. ***The Committee expresses the firm hope that the Government will take immediate measures to repeal or amend Decree No. 96/PR/MFPT/94 in order to ensure full observance of the principles of freedom of association in the exercise of the right to strike in the public service. It also asks the Government in its next report to send the implementing Decree (of 23 June 2003) of Act No. 017/PR/2001 issuing the General Public Service Regulations.***

## Chile

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

The Committee notes the Government's report and its reply to the comments of the National Inter-enterprise Trade Union of Metallurgy, Communications, Energy and Allied Workers (SME), dated 9 January 2006, and of the National

Confederation of Municipal Employees of Chile (ASEMUCH), dated 25 May 2006, which refer to matters already raised by the Committee and to other issues covered below.

The Committee recalls that it has been asking the Government for several years 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, the Committee asked the Government in its previous observation 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 banishment;
- 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 of 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 of 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 negotiating process. The Committee notes the Government's statement that the amendment introduced by Act No. 19759 limits that possibility, requiring the payment of a bond of four units of account (UF) for each worker hired as a replacement. In this respect, the Committee recalls that the contracting of workers to break a strike in a sector not considered as essential in the strict sense of the term for the purposes of prohibiting strikes, constitutes a serious violation of the freedom of association;
- 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 paragraph 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 that the definition of services in which strikes may be prohibited, as set out in section 384, 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. The Committee notes the Government's statement that the list containing the establishments covered by section 384 is drawn up jointly by the Ministries of Labour and Social Security, National Defence and the Economy, Development and Reconstruction in July each year and that the list for 2006 was much shorter than in previous years, with the removal of sanitary services and port enterprises from the list and the extension to them of the right to strike. Nevertheless, the Committee observes that the list includes some private port terminals and also the Arica–La Paz railway, which cannot be considered as essential services in the strict sense of the term;
- amend or repeal section 385 of the Labour Code, which provides that, in the event of a strike which by 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 supervision of the accounts and financial and property transactions of associations.

The Committee observes that the Government states that it has noted the Committee's observations in this respect and that these will be taken into consideration in forthcoming discussions for bringing the legislation into conformity with the provisions of the Convention. The Committee regrets that, for several years since the ratification of the Convention, numerous restrictions have continued to be placed on the exercise of the rights established by the Convention. *The Committee hopes that the Government will take all the necessary steps to amend the legislation in order to bring it into full conformity with the provisions of the Convention. The Committee requests the Government to supply information in its next report on all measures taken in this respect.*

*Moreover, with regard to the preparation of a draft revision of the Constitutional Organic Act on Municipalities, No. 18695, the Committee requests the Government once again to make every effort in the accompanying consultation*

*process to take account of the principle whereby the prohibition of the right to strike in the public service should be limited to officials exercising authority in the name of the State and hopes that the final text will take account of this principle.*

Finally, the Committee notes the communication dated 28 August 2007 from the International Trade Union Confederation (ITUC), which refers to the issues raised by the Committee and also to the prohibition of the right to strike imposed on agricultural workers during harvest time. *The Committee requests the Government to send its comments in this respect.*

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

The Committee takes note of the Government's report and its response to the comments of 8 January 2006 by the National Inter-Enterprise Union of Metal, Energy, Communication and Allied Workers (SME), which referred to the following matters:

- Section 82 of the Labour Code which provides that “in no event may the remuneration of apprentices 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. The Committee notes that, according to the Government, the reason for this prohibition is that services are provided on a temporary basis and in any event for a shorter time than the period of validity of a collective instrument (two years). The Government adds that section 314(2) of the Labour Code allows unions of temporary or casual workers to come to agreements with one or more employers on common conditions of work and pay for certain temporary or seasonal tasks or activities. Furthermore, despite the limitation, apprentices' wages are protected within the framework of the statutory definition of “minimum wage”. *While noting the Government's statement that it will take account of the SME's comments in future legal discussions, the Committee would again point out that, according to Articles 5 and 6 of the Convention, only the armed forces, the police and public officials engaged in the administration of the State may be excluded from 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. *In the Committee's view, these requirements are difficult to meet and do not adequately 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 notes that, according to the Government, the rules on collective bargaining for groups of workers other than the enterprise union are optional for the employer, who chooses whether or not to initiate the bargaining procedure. The employer must notify his decision within ten days of the submission of the draft agreement, otherwise the negotiating process is initiated. *While noting the Government's statement that it will take into account the SME's comments in future legal discussions, the Committee considers that these provisions do not, generally speaking, adequately promote collective bargaining with trade union organizations.*

The Committee has also, for several years, been commenting on the following matters:

- Section 304 of the Labour Code, which does not allow collective bargaining in state enterprises dependent on the Ministry of National Defence or that 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. The Committee observes that the Government indicates that it has taken note of these observations and will take them into account in future legal discussions.
- 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. The Committee notes that, according to the Government, Act No. 19673 incorporates officials of the National Congress in the regime established for officials of the State Administration (Act No. 19296), which allows them to set up their own associations of public servants. *The Committee nonetheless observes that the abovementioned regime does not envisage a right to collective bargaining, and again points out that, except for officials engaged in the administration of the State, workers in the service of the National Congress and the judiciary, like workers in*

*state enterprises or institutions or those to which the State contributes or in which it participates or is represented, should enjoy the right to collective bargaining.*

- Sections 314bis and 315 of the Labour Code, which provide that groups of workers, other than unions, may submit draft collective agreements. The Committee notes that the Government gives the legislative origin of these provisions and indicates that under them, a union of an enterprise or establishment may, by reason of its trade union status, bargain collectively, whereas groups of workers who join forces in order to negotiate have to meet quorum and percentage requirements established by law in order to form a union in the enterprise or one of its establishments. Although the legislation authorizes collective bargaining for groups of workers, it also lays down a number of minimum conditions and formalities allowing a presumption that there is a collective will to negotiate on the part of the workers involved. The Government adds that, at present, in many enterprises collective agreements and contracts concluded indifferently by groups of workers or trade unions exist side by side. *The Committee points out that direct bargaining between an enterprise and its workers, over and above representative organizations where these exist, may in some cases 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.*
- 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, according to the Government, the purpose of this provision is to allow the greatest possible number of authorized workers to negotiate collectively. The Committee refers the Government to its comment in the previous paragraph.

The Committee notes with regret that, although the Convention was ratified some years ago, there are still numerous restrictions on the exercise of the rights enshrined in the Convention. *The Committee expresses the hope that the Government will take the necessary steps to amend the current legislation on all the points mentioned above, in order to allow workers to enjoy fully the safeguards established in the Convention. The Committee requests the Government to keep it informed of all measures adopted to this end.*

Lastly, the Committee notes the communication of 28 August 2007 from the International Trade Union Confederation (ITUC) referring to a number of issues examined by the Committee, and to the dismissal of trade unionists and the pressure exerted to get members to give up union membership and the collective agreement, and threats to workers to get them to sign a collective agreement followed by subsequent pressure for them to conclude individual agreements in one company. *The Committee requests the Government to send its comments on the above.*

## China

### Hong Kong Special Administrative Region

#### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** *(notification: 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 takes note of the information provided by the Government representative to the Conference Committee in June 2004 and the discussion that followed. The Committee notes that the Conference Committee took note of the Government's statement that it was in the process of examining measures to guarantee a better application of the Convention, in particular with regard to the promotion of collective bargaining, and expressed the firm hope that measures would be taken without delay to guarantee the full implementation of the Convention.

*Article 1 of the Convention.* The Committee's previous comments concerned the need to provide further protection against anti-union discrimination. The Committee had noted the information provided by the Government to the effect that it had been working on 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 – an approach endorsed by the tripartite Labour Advisory Board.

The Committee notes that the Government has been working on a draft amendment bill on this issue but given the complexity of the matter more time is needed. *The Committee requests the Government to indicate in its next report any progress made in the adoption of the bill. Noting that this issue has been under examination since 1999, the Committee hopes that the bill will be adopted as soon as possible.*

*Article 4. 1. Measures to promote collective bargaining.* The Committee's previous comments concerned the need to strengthen the collective bargaining framework, pursuant to comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) and the Hong Kong Confederation of Trade Unions (HKCTU) and the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 1942 with regard to low levels of coverage of collective agreements which are moreover not binding on the employer, as well as the absence of an institutional framework for trade union recognition and collective bargaining.

The Committee notes the Government's statement that it subscribes fully to *Article 4* of the Convention and is committed to promoting voluntary and direct negotiations between employers and employees or their respective organizations. It also notes

the measures described by the Government with a view to the promotion of collective bargaining, including promotion of effective communication at enterprise level, notably through seminars and promotional materials, an informal survey on the mode of labour-management communication, and encouragement of voluntary negotiations, by promoting tripartite dialogue at the industry level through industry-level tripartite committees (in the catering, construction, theatre, logistics, property management, printing, hotel and tourism, cement and concrete as well as retail industries). The Government emphasizes with regard to the tripartite committees that they are not merely advisory bodies. They provide, on the contrary, an effective forum for major employers' and employees' organizations to discuss labour issues of mutual concern and hence facilitate voluntary communication and negotiations between them. During the reporting period, as a further measure to promote voluntary negotiation, special efforts were made by these tripartite committees to focus on industry-specific people management issues. As a result, employers' and employees' organizations in some industries, such as property management and hotel and tourism industries, have agreed on industry-specific good people management guidelines which place specific emphasis on the importance of effective communication between employers and employees. In September 2004, the three tripartite committees on catering, retail and hotel and tourism industries jointly organized a large-scale labour relations seminar for employers and employees of these industries.

The Committee also notes from the Government's report that, although statistics on collective bargaining are not available, collective agreements are quite common in some trades such as printing, construction, public bus and air transport industries as well as ship maintenance and the goods loading and unloading industries. Many of these agreements have benefited from the Labour Department's conciliation services.

The Committee takes note of this information, in particular, the adoption of collective agreements in the abovementioned sectors. ***It requests the Government to indicate in its next report any further sectors covered by collective agreements, as well as the level of coverage (number of collective agreements and workers covered). Noting, moreover, that effective communication and tripartite dialogue cannot function as a substitute for bipartite negotiations, although they may be useful tools for the promotion of a positive industrial relations climate at the highest level, the Committee requests 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.***

2. *Measures to promote collective bargaining for civil servants not engaged in the administration of the State.* In its previous comments, the Committee had requested the Government to take all necessary measures so as to guarantee the right of public employees who are not engaged in the administration of the State to negotiate collectively their conditions and terms of employment.

The Committee notes from the Government's report that the Government has established within the civil service an elaborate three-tier staff consultation mechanism which operates in compliance with the spirit and principles of *Article 4* of the Convention for consultation between management and staff on various issues of concern to civil servants, including terms and conditions of employment of public employees, regardless of whether they are engaged in the administration of the State. The Government will build on this machinery and put in place customized procedures or forums to engage staff representatives in more intensive consultation on the terms and conditions of employment of civil servants, where necessary and appropriate. It is now working closely with staff on the development of an improved civil service pay adjustment mechanism to underpin the established policy of maintaining civil service pay at a level broadly comparable to that of the private sector. To this end, in April 2003, the Government set up a consultative group which already functions as a regular forum for intensive discussions with the participation of the staff sides of the four central consultative councils and the four major service-wide staff unions.

***Taking due note of this information, the Committee requests the Government to indicate in its next report any measures discussed or adopted as a result of the work of the consultative group on an improved civil service pay adjustment mechanism. Moreover, noting once again that public servants who are not engaged in the administration of the State have the right to negotiate collectively their conditions and terms of employment, the Committee once again requests the Government to indicate, in its next report, any measures taken with a view to extending the right to collective bargaining to this category of civil servants. The Committee finally requests the Government to provide further information on the various activities covered by the civil service with a view to determining those categories of civil servants who are not engaged in the administration of the State.***

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

## Colombia

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

The Committee takes note of the Government's report. It also notes the communication addressed by the Ministry of Social Welfare to the Director-General of the ILO which was read out in the Conference Committee on the Application of Standards in 2007. In it, the Ministry reaffirms its commitment to the Tripartite Agreement on Freedom of Association and Democracy, signed by the Government and representatives of the employers and workers in Geneva on 1 June 2006, and expresses its resolve to further the implementation of the Agreement. The Government also notes the Director-General's reply, indicating that the Office will provide all possible assistance for effective implementation of the measures announced and proposing that a high-level mission, appointed by himself, should be sent by the International Labour Office to identify new needs with a view to ensuring effective application of the Tripartite Agreement and the technical cooperation programme. The Committee further notes the numerous cases concerning Colombia currently before the Committee on Freedom of Association.

The Committee notes the comments on the application of the Convention submitted on 28 August 2007 by the International Trade Union Confederation (ITUC) and those from the Single Confederation of Workers (CUT), the General Confederation of Labour (CGT), the Confederation of Workers of Colombia (CTC) and the Confederation of Pensioners

of Colombia (CPC) in a communication of 28 May 2007, and those of 31 August 2007 from the CUT which refer to matters the Committee has been raising, particularly acts of violence against trade union leaders and trade unionists including killings, abductions, attempts on their lives and disappearances. They likewise refer to the serious impunity surrounding these acts; the use of associated work cooperatives so that workers are unable to form and join unions; the arbitrary refusal to register new trade union organizations or new statutes or executive boards of unions; and the prohibition on strikes and certain services other than essential services.

### *Situation of violence and impunity*

Regarding the acts of violence against trade union members and leaders, the ITUC states that most of such acts are associated with industrial disputes. It again observes that paramilitary groups view the trade union movement as sympathetic to guerrillas and the extreme left and that this makes it very vulnerable. According to the ITUC, the efforts made by the Government to ensure the security of trade union leaders are insufficient. In 2006, 78 murders were reported, the education sector being the most affected, with a total of 49 murders. The ITUC also refers to numerous threats and attacks. The Colombian central organizations, for their part, refer to systematic anti-union violence, alleging the involvement of several state institutions that have links with paramilitary groups and drug traffickers responsible for the murders of several well-known trade union leaders. They further state that in most cases, responsibility for the killings can be attributed to paramilitary groups. According to the ITUC, although to a lesser extent, the guerrillas have also participated significantly in acts of violence against trade unionists.

The Committee notes that in responding, the Government refers to the protective measures adopted under the protection programme set up in 1997. It adds that the programme's budget has been consistently increased, and provides a detailed list of the number of protection measures authorized, pointing out that at present, 25.25 per cent of such protection goes exclusively to the trade union movement in the form of reinforcement of their headquarters, escorts, armoured cars and bulletproof vests, among other protective measures. Furthermore, a policy for the protection and security of democracy has been devised to provide effective protection for the rights of Colombians which is being implemented in coordination with all government bodies, with the result that the number of homicides has dropped, including the killings of trade unionists. In view of the fact that education is the sector most affected by the murders, the Government states that in cooperation with the Colombian Federation of Educators (FECODE), a national working party on teachers under threat has been set up in which the Ministry of Social Welfare, the Ministry of National Education, the Ministry of the Interior and Justice, the national police and the Presidential Human Rights Programme participate. Under the latter programme, numerous teachers have been relocated. The Government states that there were 18 murders in 2007, and reiterates its resolve to reduce this figure to zero.

The Committee notes with concern that members of trade unions continue to be the target of serious acts of violence because of their union membership. The Committee notes that the Government made significant efforts to ensure protection for trade union members and leaders and for trade union headquarters. It nonetheless observes that the number of persons being protected has declined and considers that the protection effort needs to be strengthened. Consequently, it points out once again that a truly free and independent trade union movement can develop only in a climate of respect for fundamental human rights (see General Survey on freedom of association and collective bargaining, 1994, paragraph 26) and that employers' and workers' organizations can carry on their activities freely and meaningfully only in a climate free from violence. ***Accordingly, the Committee again urges the Government to take the necessary steps to ensure the right to life and security of trade union leaders and members so that they may fully exercise the rights guaranteed by the Convention. With regard to protective measures in particular, the Committee requests the Government to take the necessary steps to provide for all trade unionists who so request, measures for their protection which are adequate and which command their trust.***

As to the measures against impunity, the Colombian central unions acknowledge the efforts of the Attorney-General to secure progress in the investigation of serious human rights violations against trade unionists, though they emphasize that only a minute percentage of investigations reach the trial or sentencing stage.

The Committee notes the Government's statement that in the context of the commitment made under the Tripartite Agreement, on 15 September 2006 the Government and the Attorney-General signed Inter-administrative Agreement No. 15406 to further the investigation of violations of the human rights of trade unions, the aims of which are: (1) to devise strategies to clarify the facts; (2) to identify and punish the perpetrators and accomplices; (3) to prevent offences that abuse the human rights of trade unions by adopting the necessary institutional, national and local plans and programmes. To this end, the Attorney-General has appointed 13 public prosecutors, with a group of criminal police investigators and a technical investigation unit comprising 78 persons, plus 24 lawyers to back up the investigations. The investigations are devoted in particular to the murders reported in the context of Case No. 1787, currently before the Committee on Freedom of Association. The Government adds that the Higher Council of the Judiciary appointed three dedicated judges to hear cases referred by the Attorney-General. The Government has sent a long list of investigations (48) that ended with the conviction of the perpetrators of acts of violence against trade union leaders. The sentences were pronounced between June 2002 and the beginning of 2007.

While observing that since 2002 the number of sentences imposed continues to be quite modest, the Committee notes the efforts made by the Government, and acknowledged by the trade union organizations, to further the investigation

of abuses of the human rights of trade unionists. ***In these circumstances, the Committee requests the Government to continue to take the measures within its reach to secure progress in investigations into acts of violence against the trade union movement. It expresses the firm hope that the measures adopted recently in connection with the appointment of new prosecutors and judges will lead to an improvement in combating the impunity situation and shed light on the acts of violence against trade union leaders and members, and enable the perpetrators to be captured.***

In previous comments the Committee asked the Government to keep it informed of the manner in which Act No. 975 on Justice and Peace is applied, particularly in cases involving trade union leaders and members. The Committee notes in this connection that the Constitutional Court reached a decision on the challenges to the Act: it declared the Act enforceable but ruled that some of its provisions were unconstitutional and unenforceable. ***Observing that the Government has not sent the information requested, the Committee repeats its request.***

### ***Practical and legislative matters pending***

The Committee has been commenting, in some instances for many years, on the following matters:

- various types of contractual arrangements, such as associated work cooperatives and service, civil or commercial contacts which are a cover for actual employment relationships and are used to carry out functions and work that are within the normal activities of the establishment, and under which workers may not form or join trade unions. The Committee notes the Government's response to the effect that: (a) Decree No. 4588 of 2006 has been issued and provides that cooperatives may not be used as a means of labour intermediation and that where they are used improperly, simulating activities of temporary service enterprises, this denies workers the guarantees of the Labour Code, and that Circular No. 0036 of 2007 determines the scope of the abovementioned Decree; (b) the Supervisory Authority for Economic Solidarity investigates and sanctions any departure from the social purpose of associated work cooperatives, while the Ministry of Social Welfare determines when there shall be labour intermediation and when there is non-compliance with comprehensive social security standards; and (c) the Special Unit for the Inspection, Monitoring and Control of Labour carried out 1,067 visits to associated work cooperatives, and 961 investigations were opened as a result of which penalties were imposed on 118 associated work cooperatives found to have been misused for the purpose of labour intermediation. The Committee points out that *Article 2 of the Convention* provides that workers and employers, without distinction whatsoever, shall have the right to establish and join organizations of their own choosing without previous authorization. The Committee reiterates that when workers in cooperatives or those covered by other types of civil or commercial contracts have to perform work within the normal activities of the establishment in the context of a relationship of subordination, they should be treated as employees in a real employment relationship and should therefore enjoy the right to join trade unions. ***Consequently, the Committee once again asks the Government to take the necessary steps to ensure that full effect is given to Article 2 of the Convention so that all workers without distinction whatsoever enjoy the right to establish and join organizations.***
- The arbitrary refusal 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 express provision of the legislation. The Committee notes the Government's statement that a resolution has been issued (No. 1651 of 2007) amending sections 2, 3 and 5 of resolution No. 1875 of 2002 in order to speed up the procedure for entering trade union organizations in the register. The Committee observes that one of the grounds for denying registration set out in Decree No. 1651 of 2007 is "that the trade union organization has been established not to guarantee the fundamental right of association but to secure labour stability". The Committee reminds the Government that *Article 2 of the Convention*, guarantees the right of workers and employers to establish organizations "without previous authorization" from the public authorities and that regulations governing the constitution of organizations are not in themselves incompatible with the provisions of the Convention provided that they are not equivalent to a requirement for previous authorization and do not constitute such an obstacle that they amount in practice to a prohibition (see General Survey, op. cit., paragraphs 68 and 69). The Committee further considers that the administrative authority should not be able to deny registration of an organization merely because it considers that it might devote itself to activities that go beyond normal trade union activities or that it might not be able to fulfil its functions. ***In these circumstances, the Committee requests the Government to take steps to amend this provision of Decree No. 1651 of 2007 and to make sure that the administrative authority does not have discretionary powers that are inconsistent with Article 2 of the Convention and that it registers new organizations or executive committees, as well as amendments to rules, without undue delay.***
- The prohibition on the calling of strikes by federations and confederations (section 417(i) of the Labour Code). The Committee repeats once again that higher-level organizations ought to be able to resort to strikes in the event of disagreement with the Government's economic and social policy. ***The Committee requests the Government to take steps to amend section 417(i) of the Labour Code.***
- 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 which are not necessarily essential (section 430(b) as it pertains to transport, (d), (f), (g) and (h); section

450(1)(a) of the Labour Code and Decrees Nos 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967) and the possibility to dismiss trade union leaders 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 association. The Committee notes that the Government acknowledges that section 430 is not consistent with the provisions of the Convention and states that the Ministry has seldom declared strikes to be unlawful and that such decisions are reviewed by the State Council. Moreover, the Committee notes with interest that the Government has transmitted a copy of a draft law submitted to Congress, providing that the illegality of a suspension or of a collective agreement will be decided by a labour court judge. ***Mindful that the Government acknowledges the need to amend some of these provisions and that it had presented a draft law to Congress providing for several amendments to the Labour Code, the Committee asks it to take the necessary steps to avail itself of the fact of the draft law's presentation to Congress to amend all the legal provisions on which it has commented, and invites it to seek technical assistance from the Office.***

- The authority of the Minister of Labour to refer a dispute to arbitration when a strike exceeds a certain period – 60 days – (section 448(4) of the Labour Code). The Committee takes due note of the Government's indications of the submission to Congress of a draft law that amends this section, providing that the parties may agree to a conciliation mechanism or arbitration to resolve their dispute, as well as the fact of the intervention of the subcommittee of the committee of consultation on wage policy and labour. However, the Committee notes that the draft law provides that if a definitive solution cannot be found, both or one of the parties may petition the Ministry of Social Welfare to convene an arbitration tribunal. The Committee reiterates that compulsory arbitration to end a strike, except when at the request of both parties, is acceptable only in instances where the strike may be restricted, or even prohibited, i.e. in disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. ***The Committee requests the Government to take the necessary steps to amend this principle in keeping with the principle noted above.***

***Observing that it has been making comments for many years, the Committee expresses the firm hope that the Government will take the necessary steps without delay to amend the legislative provisions so as to align them with the Convention. The Committee further hopes that the high-level mission undertaken in November 2007 will be useful in assisting the Government in its efforts to comply with the Convention. It requests the Government to keep it informed of any developments in this respect.***

The Committee is addressing a request on other matters directly to the Government.

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

The Committee notes the Government's report. The Committee also notes the communication from the Minister for Social Security addressed to the Director-General which was read in the Conference Committee on the Application of Standards, reaffirming the Government's commitment to the Tripartite Agreement for the Right of Association and Democracy, signed by the Government and the employers' and workers' representatives on 1 June 2006 in Geneva, and expressing the wish to reinforce its implementation. The Committee also notes the reply sent by the Director-General indicating that the Office will provide all possible assistance to ensure the effective application of the stated measures. In this respect, it was proposed to send an ILO high-level mission, appointed by the Director-General, in order to identify new needs in relation to ensuring the effective application of the Tripartite Agreement and of the technical cooperation programme. The Committee also notes the numerous cases concerning Colombia which are being examined by the Committee on Freedom of Association.

Moreover, the Committee notes the comments on the application of the Convention from the International Trade Union Confederation (ITUC), dated 28 August 2007, and also the comments from the Single Confederation of Workers (CUT), the General Confederation of Workers (CGT), the Confederation of Workers of Colombia (CTC) and the Confederation of Pensioners of Colombia (CPC), dated 28 May 2007, and of the CUT, dated 31 August 2007, referring to issues which have been under examination by the Committee.

#### ***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 the Government's statement that, under Act No. 411, public employees have the right to submit respectful claims to their respective entities and the latter must reply to the said claims, as guaranteed by article 23 of the Constitution. According to the Government, by virtue of this procedure, a significant number of agreements on conditions of work have been achieved. However, the Committee emphasizes that, under the provisions of Convention No. 98, public employees who are not engaged in the administration of the State shall enjoy the right to collective bargaining. In this respect, the Committee notes Constitutional Court ruling C-1234/05 of 29 November 2005, which declared as enforceable the expression "trade unions of public employees

may not submit claims or conclude collective agreements” contained in section 416 of the Substantive Labour Code, provided that, in order to implement the right to collective bargaining established in article 55 of the Political Constitution, and in conformity with ILO Conventions Nos 151 and 154, trade unions of public employees may have recourse to other means of concertation regarding conditions of work, on the basis of the claim made in this respect by these trade unions, pending the regulation of the procedure for this purpose by the Congress of the Republic. ***The Committee therefore requests the Government to take the necessary steps, in conformity with the ruling of the Constitutional Court, to take legislative measures to ensure the right to collective bargaining of public employees and in the meantime, to promote means of concertation regarding conditions of work. The Committee requests the Government to supply information in its next report on all measures adopted in this respect, in the hope that it will be able to note tangible progress in the near future, and reminds it that it may avail itself of the technical assistance of the Office.***

- ***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 ensure the possibility in practice to conclude collective agreements with them, and asked the Government to provide information on the total number of collective agreements and collective accords and the respective number of workers covered by them. In this regard, the Committee notes the Government’s statement that in conformity with Colombian legislation: (a) collective accords and collective agreements can coexist; (b) collective accords may not exceed the benefits laid down in the collective agreements of the same enterprise; and (c) even where a collective accord exists, an employer is obliged to negotiate with the trade union and, in the absence of any agreement, the union is entitled to take the collective dispute to a court of arbitration. The Government points out that the Ministry of Social Security has participated in consultation processes and concluded a satisfactory agreement on various occasions, in the form of either a collective agreement or a collective accord. The Committee observes that, under section 481 ff. of the Substantive Labour Code, collective accords may only be concluded in cases where the membership of the trade union does not include over one third of the workers and refers once again to *Article 4 of the Convention* respecting the full development and utilization of machinery for voluntary negotiation with workers’ organizations with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee emphasizes that direct negotiations with workers should only be possible in the absence of trade union organizations. ***The Committee therefore requests the Government once again to guarantee that collective accords are not used to undermine the position of trade union organizations and the possibility in practice of concluding collective agreements with them. The Committee also requests the Government to provide information on the total number of collective agreements and collective accords, and on the respective number of workers covered by them.***

Finally, the Committee notes the Government’s statement that, in the context of the Standing Advisory Committee on Wage Policies, the Special Committee on the Settlement of Disputes relating to the ILO was reactivated, with a view to handling disputes arising from matters regulated by the ILO Conventions, and giving priority to those relating to freedom of association.

## Comoros

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

The Committee takes note of the Government’s report.

In its previous comments, the Committee expressed its concern at the state of collective bargaining in the country and pointed out the importance of taking steps to encourage voluntary negotiation between employers and organizations of workers.

The Committee takes note of the Government’s reply. The Government states that since its last report, there has been no noteworthy progress on collective negotiation between employers and workers. Two draft collective agreements, one on pharmacies and the other on the bread, pastry-making and allied industries have not as yet been concluded.

***The Committee notes with regret that these two draft agreements have not progressed. It notes that the Government has expressed the wish to receive technical assistance from the ILO, and expresses the firm hope that following such assistance, it will be able to note that significant progress has been made in the number of collective agreements and accords concluded in the country. Meanwhile, it requests the Government to take every measure it can to promote collective bargaining in both the public and the private sectors. The Committee requests the Government to keep it informed in this regard.***

## Congo

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

The Committee notes with regret that the Government's report has not been received. It is therefore bound once again to reiterate its earlier observation, which read as follows:

In its previous comments, the Committee 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 respect, the Committee noted that, according to the Government, section 248-15 had been amended, but that it was not able to provide a copy of the text amending the provisions of this 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 empowerment to issue enforceable decisions (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 161). *The Committee expresses the hope that the text amending section 248-15 of the Labour Code takes these principles into account and requests the Government to send it a copy of the text as soon as possible.*

Finally, the Committee requested the Government to keep it informed of developments in the revision of the Labour Code in its next report and to send it a copy of any draft amendment to that Code in order to ensure its conformity with the provisions of the Convention. The Committee noted the Government's indication that the revision process had been completed and that the draft text had been submitted to the National Labour Advisory Commission for its opinion. *The Committee requests the Government to send it a copy of the draft revised Labour Code and to continue to keep it informed in this regard*

The Committee notes with regret that the Government has not sent its comments on the observations of 10 August 2006 of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) concerning the eight trade union representatives arrested on 27 October 2005 and remanded for 24 hours. *It again asks the Government to send its comments on this matter.*

## 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 the observations made by the Public and Private Enterprise Workers' Union (SITEPP) and the International Trade Union Confederation (ITUC), dated 21 May and 28 August 2007, on the application of the Convention. The Committee also notes the report of the high-level technical assistance mission which visited San José from 2 to 6 October 2006 in the context of Convention No. 98.

1. *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 noted 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 wife and having completed five years of permanent residence in the country. Nevertheless, the Bill provides that the bodies of trade unions must comply with the provisions of article 60 of the Constitution, which provide that "foreigners 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, but it appears not to be on the current agenda of the Legislative Assembly. The Committee 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 in order 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*.

2. *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 a requirement for the executive board to be appointed each year.

3. *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 on docks and quays" – section 373(c) of the Labour Code.

The Committee previously noted with interest that, according to the Government, on 25 August 2005 the Judiciary referred to the Executive for submission to the Legislative Assembly a Bill on the reform of labour procedures, which benefited from ILO technical assistance. The Committee noted that, according to the Government, the above 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 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 to be an essential service only 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;
- a special and very short summary procedure is introduced for workers with trade union immunity.

Moreover, in a direct request, the Committee observed that the Bill establishes a requirement for 40 per cent of the workers in order to call a strike and subjects strikes to a limit of 45 calendar days (after which arbitration is compulsory).

Furthermore, with regard to the right to strike, the Committee noted previously 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 the trade union federations, the procedure to set a strike in motion could last up to three years.

*Need for Bill No. 13475, in amending section 344 of the Labour Code, to establish a specific and short period within 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 indication that in practice registration applications are processed without delay and, if they fall short of 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 report 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 requested the Government to have these deadlines established explicitly in Bill No. 13475.

The Committee notes that in its report the Government: (1) expresses its complete readiness and will to resolve the problems referred to and reiterates the statements made in its report in 2005; (2) has supported in the Legislative Assembly a draft reform of the Constitution formulated with the technical assistance of the ILO to overcome the prohibition on foreign nationals from having access to trade union office, and forwarded the comments of the Committee of Experts to the President of the Legislative Assembly; (3) in practice, the Ministry of Labour guarantees the full autonomy of trade union organizations to determine the duration of the mandate of trade union executive boards and the amendment of the legislation on this point is contained in Bill No. 13475; (4) with regard to the restrictions on the right to strike, the Bill to reform labour procedures (No. 15990) is undergoing the legislative process and the Government has convened a forum, with ILO assistance and with the participation of the authorities and the social partners, with a view to achieving consensus; Plenary Accord (Supreme Court of Justice) No. 16-2000 determines the judicial body competent as the depository of strike notifications, and the time scale and appeal procedures (very rapid) to which such a procedure is subject; and (5) with regard to the need to establish a specific and short period of time for the administration to issue an opinion on the registration of trade unions, in practice this problem has been resolved (decisions relating to administrative appeal procedures have to be notified within 15 days); nevertheless, a copy of the Committee's comment has been forwarded to the President of the Legislative Commission which is responsible for the analysis of Bill No. 13475.

The Committee notes 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 in the context of Convention No. 98. It notes with interest 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 on whether they would be prepared to conclude an agreement to facilitate the adoption of the Bill to reform labour procedure, call for the establishment of a joint commission in the National Assembly to agree on aspects of this Bill on which divergencies persist and subsequently consider facilitating other legislative texts also related to matters falling within the terms of reference of the mission. This agreement was concluded as follows: *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 procedure. 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 Minister proposed that the request to the Assembly should be formulated in a joint note by the Executive, the Judiciary and the Higher Labour Council. The Minister undertook to seek the rapid examination of the Bill to reform labour procedure, the establishment of the joint commission and, finally, the agreement of the President of the Republic to receive the members of the Higher Labour Council.*

***The Committee hopes that the above joint commission in the National Assembly will be established without delay and will address all the pending matters. The Committee requests the Government to keep it informed 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 procedure (No. 15990) with the principles of Conventions Nos 87 and 98 and hopes that such assistance will be provided as soon as possible.*

The Committee notes that the 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 SITEPP refers in particular to matters relating to the application of Convention No. 98. *The Committee requests the Government to provide its comments on the observations made by the ITUC relating to the application of the Convention, and recalls that the legislative issues referred to concern a series of issues relating to the application of the Convention in practice. The Committee emphasizes that certain of these comments refer to acts of violence against trade union premises and death threats against a trade union leader and it requests the Government to order the appropriate investigations and to keep it informed in this respect.*

*The Committee emphasizes once again that the matters pending 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, it 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 keep it informed in this respect.*

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

The Committee notes the report and other communications from the Government and the discussion in the Committee on the Application of Standards in June 2006 on the application of the Convention. The Committee also notes the Government's reply to the comments on the application of the Convention made by the International Trade Union Confederation (ITUC) and the Union of Public and Private Enterprise Employees (SITEPP), which relate mainly to issues that are already under examination. The Committee noted in its previous observation the report of the High-level Mission which visited the country from 2 to 6 October 2006. The Committee further notes Cases Nos 2490 and 2518 examined by the Committee on Freedom of Association at its November 2007 meeting, which confirm a high number of dismissals of trade unionists, as well as the new rulings of the Supreme Court which find that certain clauses of collective agreements in public sector institutions or enterprises are unconstitutional.

The Committee recalls that the problems relating to the application of the Convention which it raised in its previous observation were as follows:

- the slowness and ineffectiveness of recourse procedures and compensation in the event of anti-union acts (according to the High-level Mission, the slowness of procedures in cases of anti-union discrimination results in a period of not less than four years to obtain a final ruling);
- restrictions on the right to collective bargaining in the public sector as a result of various rulings by the Constitutional Chamber of the Supreme Court; according to the SITEPP, the judiciary has maintained the stance that there is no right to collective bargaining in the public sector in a collective dispute against the Ministry of Education; however, the Government has emphasized in its communications that the very fact that the judiciary has found to be unconstitutional certain clauses of collective agreements in the public sector shows that the right to collective bargaining is recognized;
- the subjection of collective bargaining in the public sector to criteria of proportionality and rationality in accordance with the case law of the Constitutional Chamber, which has declared unconstitutional a considerable number of clauses of collective agreements in the public sector at the instigation of the public authorities (the Ombudsperson, the Office of the Public Prosecutor) or of a political party;
- the enormous imbalance in the private sector between the number of collective agreements concluded with trade unions (much lower) and the number of direct agreements concluded with non-unionized workers (the Committee previously called for an independent investigation into this matter).

The Committee notes that the Government refers to the statements made in its previous report 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) relating to these problems have included the submission of several legislative proposals to the Legislative Assembly and their reactivation: a draft constitutional amendment to article 192, a Bill on collective bargaining in the public sector, and the addition of 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; draft texts to revise various sections of the Labour Code, Act No. 2 of 26 August 1943, and sections 10, 15, 16, 17 and 18 of Legislative Decree No. 832 of 4 November 1949 and its amendments; an Act to reform labour procedures (aimed at the elimination of delays and introducing the principle of hearings, and the establishment of summary procedures for cases of anti-union discrimination); (4) the Government's efforts have also included other types of initiatives, such as the intervention of third parties to defend collective agreements (*coadyuvancia*) in legal actions of unconstitutionality brought in order to annul specific clauses in the agreements; and the reinforcement of alternative dispute settlement procedures through the Centre for Alternative Settlement of the Ministry of Labour, which increased

the number of persons dealt with in 2005 to 3,329. The Government indicated that in 2005 complaints against anti-union discrimination related to 38 cases.

The Committee notes the Government's indication in its report that the unionization rate rose from 4.2 per cent in 2005 to 4.6 per cent in 2006 in the private sector, while the rate is 9.3 per cent in the public sector. There are currently 244 active trade union organizations, made up of 228 unions, 11 federations and five confederations. With regard to the Committee's concern at the persistence of significant problems in relation to the application of the Convention, the Government states that it does not share this concern, since many of the complaints presented to the Committee on Freedom of Association and the High-level Mission which visited the country in October 2006 are unknown to the Government, are unfounded or have been resolved through conciliation. The Committee notes that the Government understands its concern at the lack of political will by previous governments to push forward draft legislation to resolve pending problems. The current Government has the will to do so and has maintained contact with the Executive, including the Ministry of the Presidency, and the Legislative, including 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 reactivation of the draft texts in question. The Government states that it has sent reports to the judiciary forwarding the observations and positions of the Committee of Experts. The Government lays emphasis on the follow-up meetings held by the Minister of Labour and Social Security, on occasions 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 it held a meeting with numerous representatives of all the sectors involved (the authorities, civil society, etc.) to analyse and seek consensus for the draft legislation to reform labour procedures which is awaiting the opinion of the Legal Affairs Commission of the Legislative Assembly.

The Committee further notes that the Government formally requested the technical assistance of the ILO Subregional Office in July 2007 in the context of the follow-up to the recommendations of the High-level Mission. In accordance with the proposal of the Mission, the advice of the Subregional Office is focused on promoting an internal and continuous process of training, promotional and information activities for political officials and the social partners to improve understanding of bargaining, disputes and legislative provisions, as well as the higher values involved. During the fourth quarter of 2007, it is planned to hold a seminar on technical issues and to exchange experiences with a view to promoting social dialogue in a tripartite context, with a view to benefiting from international cooperation in seeking solutions to problems relating to the application of the Convention. As a result of all of the measures described, the Government hopes that solutions will be found to the pending problems. The Committee notes the emphasis placed by the Government on the fact that some of those problems broadly coincide with the recommendations for Costa Rica contained in the White Paper formulated by the Central American Deputy Ministers of Labour, which includes voluntary undertakings. A plan has also been developed for the implementation of the recommendations with the participation of the judiciary covering the period 2007–09, on which an evaluation is to be carried out every six months.

With regard to the problem of collective bargaining in the private sector, in view of the existence of more direct agreements than collective agreements, in relation to which the Committee requested an independent investigation, the Committee notes the Government's indication that the administrative instruction of 4 May 1991 requires the labour inspectorate to ascertain that there is no union recognized for bargaining in the enterprise concerned before a direct agreement with non-unionized workers is deposited. Nevertheless, the Government adds that in August 2006 a total of 67 collective agreements were in force in the public sector and 13 in the private sector, while the number of direct agreements was 69.

The Committee notes the Government's statement that it gave its consent for an independent technical expert designated by the ILO to investigate the issue and is grateful that the Government gave the expert every facility. In the view of the High-level Mission of 2006, only a convincing and shared assessment of the phenomenon will make it possible to formulate public policies, in terms of legislation, promotion and information, designed to overcome the negative implications. The Government collaborated with all the assistance and logistical and technical support required by the expert, including the planning of the meetings requested. The Committee appreciates that, as indicated in the study of the independent expert, all those interviewed gave their kind support.

The Committee notes that, according to the study carried out by the independent expert, "according to the statistics provided by the Ministry of Labour and Social Security, there are now in force 74 direct agreements, while only 13 collective agreements remain in force"; "it is also an established fact, as well as being clear and evident, that it is the latter (employers) who propose, defend and claim them and who, in particular, take the initiative for their conclusion". The study also refers to the phenomenon of intervention by employers in the election of standing committees, including the imposition of candidates, public disqualification or vetoes, etc.; ballots are not secret and electors can be intimidated. According to the mission report, "although it is not correct to say that in all cases the election of the members of standing committees is a result of processes that are fixed and not authentic, which would not be in line with the truth, it can be said that the very conception of standing committees and the practices universally adopted for their establishment clearly lack the elementary guarantees of democratic authenticity ..., and the indispensable conditions of independence and representativeness are not present". The expert's report indicates that standing committees lack resources and the capacity to maintain a dialogue with employers that ensures a certain balance in negotiations. In general, the expert's study shows

that standing committees have been used to prevent the establishment of trade union organizations or to impede their activities.

The Committee notes these conclusions with concern and draws the Government's attention to the importance of these matters being submitted for tripartite examination so as to remedy the existing imbalance between the number of collective agreements and of direct agreements with non-unionized workers and so as to facilitate the formulation of the legal and other means necessary to prevent standing committees and direct agreements from having an anti-union impact in practice, and also from being established where there is already a trade union organization. The Committee recalls once again that, under the terms of *Article 2 of the Convention*, the State is under the obligation to guarantee adequate protection against any acts of interference by employers in workers' organizations, and that *Article 4* of the Convention enshrines the principle of the promotion of collective bargaining between workers' organizations and employers' organizations.

The Committee continues to consider that the situation of trade union rights remains delicate. The Committee welcomes the desire shown by the current Government to push forward draft legislation, in many cases with tripartite support, with a view to complying with the Convention and giving effect to the Committee's comments. ***The Committee hopes that the various draft texts that are currently under examination will be adopted in the very near future and that they will be fully in conformity with the Convention. The Committee requests the Government to keep it informed in this respect and hopes that an improvement in the application of the rights and guarantees set forth in the Convention will be the outcome of this political will.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Côte d'Ivoire

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

The Committee notes the Government's report containing its reply to the observations of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 10 August 2006 concerning acts of repression of workers and in particular on the occasion of the demonstration of public employees organized by the National Union of Public Finance Workers (SINAFIG) on 27 September 2005, which was alleged to have been brutally repressed by the police, a number of officials having been injured on that occasion.

The Committee notes the Government's statement that the public employees taking part in the demonstration were illegally occupying a public thoroughfare. The demonstration, which did not observe the relevant procedures, was dispersed by the police (not by armed bands) since it was causing a public disturbance and restricting freedom of movement and the freedom of other workers to reach their workplaces.

In this respect, the Committee recalls that the right to organize public meetings or demonstrations in support of social and economic demands, constitutes an important aspect of trade union rights. Nevertheless, organizations must observe the general provisions relating to public meetings, which are applicable to everyone. The prohibition of demonstrations or processions on public streets, when it is feared that disturbances might occur, does not necessarily constitute an infringement of trade union rights, but the authorities should strive to reach agreement with the organizers of meetings to enable them to be held in some other place or under agreed upon conditions so as to minimize the likelihood of disturbances. While reasonable restrictions are acceptable, they should not result in breaches of fundamental civil liberties (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 37). ***The Committee asks the Government to take the necessary measures to ensure observance of these principles.***

Finally, the Committee notes the observations of the International Trade Union Confederation (ITUC), dated 28 August 2007, concerning the occupation of the headquarters of the National Union of Secondary School Teachers (SYNESCI) by the government authorities, recruitment of a militia by the maritime police to intimidate strikers and threats of penalties against primary-school teachers on strike. ***The Committee asks the Government to send its reply to the observations of the ITUC.***

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

The Committee notes the Government's report, in which it replies to the comments from the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 10 August 2006 alleging the arbitrary application of collective agreements and the anti-union dismissals of three activists and the General Secretary of the National Union of Employees of SODEFOR (SYNACOS).

The Committee notes that the Government denies these allegations and sends numerous documents to support its point of view. The Government explains that conciliation was attempted through the labour inspector but failed, that the dismissal of the General Secretary of the union was authorized by the labour inspector and that the origin of the dismissal of the four persons was not the exercise of their trade union rights but the defamation of the enterprise management for two years preceding their dismissal. The Committee notes that the dismissed workers took the matter to court and that no

decision has yet been issued. *The Committee requests the Government to notify it of any court decision issued and send any information in this respect.*

Finally, the Committee notes the latest comments dated 28 August 2007 from the International Trade Union Confederation (ITUC) claiming that the Government interfered in the affairs of the National Union of Secondary School Teachers (SYNESCI) by challenging the legitimacy of its leader and occupying its premises. *The Committee requests the Government to send it its reply to the comments made by the ITUC.*

## Croatia

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

The Committee notes the Government's report. The Committee recalls that it had previously requested the Government to provide its observations on the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation), dated 10 August 2006, referring to issues of the distribution of trade union assets and to obstacles to the exercise of trade union rights by organizations in the commercial sector. The Committee notes the Government's statement that, for the division of trade union assets to be addressed, it is first necessary to establish the exact criteria for determining the representativeness of trade unions. The criteria for determining representativeness of trade unions and their participation in the Economic and Social Council (ESC) is currently established by the Act on the Method of Determining the Representation of Trade Union Associations of a Higher Level in Tripartite Bodies at the National Level of 1999. Currently, only six out of 24 higher level associations meet the criteria of representativeness. Furthermore, the ESC is yet to decide how to determine the number of representatives of any given trade union who should participate in negotiations. The Coordinating Body of Trade Union Confederations has gathered a working group to draw a proposal for the Trade Union Representativity Act. The Committee recalls that it has been commenting on the issue of the distribution of trade union assets since 1996 and regrets that no significant progress has been made to date in this regard. *Recalling that the transmission of trade union assets is an extremely serious issue for the viability and free functioning of trade unions, the Committee once again urges the Government to determine the criteria for the division of assets in consultation with workers' organizations and to fix a specific time frame for completing the division of the property. The Committee requests the Government to keep it informed in this respect.*

The Committee notes the comments on the application of the Convention submitted by the International Trade Union Confederation (ITUC) in a communication dated 28 August 2007, which concern obstacles to the deduction of trade union dues, sanctions against strikers in the power, chemistry and non-metal sectors. *The Committee requests the Government to provide its observations thereon, as well as on the ICFTU's previous allegation of obstacles to the exercise of trade union rights by organizations in the commercial sector.*

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

The Committee notes the Government's report. It further notes the comments of the International Trade Union Confederation (ITUC) alleging restrictions on collective bargaining in the public sector and the weakness of the legal system in dealing with cases of anti-union discrimination. The ITUC further refers to the case of a trade unionist unjustly dismissed and not reinstated despite a court order to that effect and to several cases of violations of collective bargaining rights at various enterprises.

While noting with interest the Government's indication that a Basic Collective Agreement for Public Servants and Employees was concluded in July 2007 and that the Agreement introduced 12 new rights for public service employees, the Committee notes that the ITUC refers to the Act on the Realisation of the Government's Budget of 1993, which allows the Government to modify the substance of a collective agreement in the public sector for financial reasons. *The Committee requests 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 recalls 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 further requests the Government to provide its observations on the remaining issues raised by the ITUC.*

## Cuba

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

The Committee notes the Government's report and its reply to the observations made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) on 10 August 2006, which related to pending issues of law and practice, as well as the detention and imprisonment of trade union leaders.

The Committee notes that the Government once again reiterates that the process of revising the Labour Code is continuing and that, for this purpose a broad consultation procedure is being carried out, including with the 19 national branch unions and the Confederation of Cuban Workers. In this respect, the Committee observes that this process has been going on for many years without tangible results as yet being achieved. ***The Committee hopes that the revision of the Labour Code will be completed in the near future and that the comments 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 text to which it refers.***

#### **I. Trade union monopoly**

*Articles 2, 5 and 6 of the Convention.* The Committee observes that it has been referring for many years 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 statement that the legislation in force and every day practice in all work units guarantees the full exercise of trade union activities and the broadest application of the right to organize. According to the Government, there is no prohibition in the Labour Code on workers being able to opt for the form and structure of trade union of their own choosing and that section 15 of the Labour Code essentially reaffirms the provisions of *Article 3* of the Convention. The statutes, rules and principles governing the activity of the 19 national branch unions and the Confederation of Cuban Workers in which they are federated of their own will are discussed and approved by their own congresses, and there is no provision in law setting standards relating to trade union structure. The Government also emphasizes that the Cuban tradition of unity in the trade union movement culminated in the establishment of the Confederation of Cuban Workers in 1939, not under the terms of any legislative provision, but by the free will of the workers. According to the Government, neither the 19 branch unions, nor the Confederation of Cuban Workers nor the trade union chapters numbering over 70,000 have had to seek authorization to exercise their activities freely in work units. 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). ***In these circumstances, 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 that the Government reiterates that this provision was amended by Legislative Decree No. 147 of 1994 and that Agreement No. 4085 of 2 July 2001 is currently in force. In this respect, the Committee observes that Legislative Decree No. 147 of 1994 does not explicitly repeal the above section and that a copy of Agreement No. 4085 has not been provided by the Government and is not available to the Committee. ***In these circumstances, the Committee firmly urges the Government to amend 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 "most representative organization". The Committee also requests the Government to provide a copy of Agreement No. 4085 of 2 July 2001.***

#### **II. Right to strike**

In its previous observation, the Committee referred to the fact that the right to strike is not recognized in the legislation and that its exercise in practice is prohibited and it requested the Government to take measures to ensure that no one is discriminated against or prejudiced in their employment for having peacefully exercised this right, and to keep it informed in this connection. The Committee notes the Government's repeated statement 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. Cuban workers benefit from participatory and democratic social dialogue at all levels of decision-making, and an approach based on collaboration rather than conflict has been strengthened, leading to the improvement of wage levels, social security benefits and safety and health measures, among others, as well as the continued development of their capacities. Trade union representatives participate in all processes of the formulation of labour and social security legislation and on many occasions draft texts are sent for consultation to workers' assemblies in work units. According to the Government, if Cuban workers ever

decided to have recourse to strike action, nothing could prevent them from exercising it. ***The Committee recalls that the right to strike is one of the essential means through which workers and their organizations may defend their economic and social interests and requests the Government once again to guarantee explicitly in law that no one is discriminated against or prejudiced in their employment for the peaceful exercise of this right.***

### ***III. Trade union rights and civil liberties. The conviction of trade unionists***

The Committee recalls that in its previous comments it referred to trade union leaders being sentenced to between 12 and 26 years in prison for treason and conspiracy and it requested the Government to take the necessary measures for the immediate release of the trade union leaders sentenced to severe penalties of imprisonment. The Committee notes that in its comments of 2006 the ICFTU referred to: (1) the detention of Juan Antonio Salazar of the Free Cuban Workers Union on 10 January 2006 under the accusation of alleged threats of which he had no knowledge; and (2) six of the seven independent trade union leaders convicted to sentences of between 12 and 26 years of imprisonment remained in prison and that the seventh had to serve his sentence at home or in hospital for health reasons. In this respect, the Committee notes the Government's indication that Mr Salazar was not detained, because he was not representing any group of Cuban workers, but that he had been without work since 1995 with a long criminal record for common offences, and had been prosecuted on several occasions. The Government adds that Mr Salazar left the country on 29 November 2005. With regard to the convictions of the trade union leaders, the Committee notes the Government's indication that: (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 expressions; (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.

The Committee nevertheless observes that the Government refers to generic charges, without indicating the tangible acts which gave rise to the conviction of these persons, whose release has furthermore in many cases been requested by the Committee on Freedom of Association. The Committee recalls once again that the freedom of industrial association is but one aspect of freedom of association in general, which must in itself form part of the whole range of fundamental human liberties, all interdependent and complementary one to another 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 and regardless of frontiers; (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 circumstances, the Committee once again requests the Government to take the necessary measures to secure the immediate release of the trade union leaders sentenced to severe penalties of imprisonment.***

Finally, the Committee notes the observations of the International Trade Union Confederation (ITUC) of 28 August 2007, which refer to the issues of law and practice that are already examined and to specific cases of the detention of workers who are members of the Independent National Workers' Confederation of Cuba (CONIC), persecution and threats of imprisonment against delegates of the Light Industry Workers' Union (SITIL) and the confiscation of materials and humanitarian aid sent from abroad to the Single Council of Cuban Workers (CUTC). ***The Committee requests the Government to provide its observations on these specific cases, in view of the fact that its reply does not specifically address them.***

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

The Committee notes the Government's report and its reply to the comments of the International Trade Union Confederation (ITUC) referring to issues which were already addressed, as well as the state control of the employment market, by fixing wages and conditions of work in the state sector.

The Committee notes the Government's statement that section 9 of Legislative Decree No. 229/2002 establishes the content of collective labour agreements, including specifications with regard to income, promotion, permanent employment in the entity, hours of work and rest periods.

*Article 4 of the Convention.* The Committee recalls that in its previous comments, it referred to the need to amend section 14 of Legislative Decree No. 229 on collective agreements and section 8 of the implementing regulations, which require any disputes about the content 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; and section 17 of Legislative Decree No. 229 and sections 9, 10 and 11 of

the implementing regulations, which require any disputes that arise once the agreement has been concluded to be referred, upon exhaustion of the conciliation procedure, for arbitration by the National Labour Inspection Office, with the participation of the Confederation of Workers of Cuba and the interested parties, the office's decision being binding. The Committee notes that, according to information reiterated by the Government, this system ensures complete autonomy and independence for trade union representatives, workers and administrations with regard to the submission, discussion and approval of draft collective agreements; that the Decree provides for a conciliation procedure between the administration and the trade union with participation of the highest levels for examining and solving disputes that arise to which the parties may, by agreement, have recourse at any stage of the negotiations; that no request for arbitration has been submitted to the National Labour Inspection Office in the five years that the Legislative Decree has been in force. According to the Government, the possibility of arbitration by the National Labour Inspection Office laid down in section 17 of the Decree can only be taken up once the conciliation procedure has been exhausted and with the consent of both parties concerned, in accordance with section 4(a) of resolution No. 20/2007 establishing the national labour inspection system and specifying arbitration with the participation of the Confederation of Workers of Cuba and the parties concerned for the settlement of disputes which arise with regard to collective agreements. As regards the participation of the Confederation of Workers of Cuba in the negotiation and arbitration process, the Government indicates that this is not external interference since the Confederation is not outside the negotiating process, being the trade union organization that, by the wish of its own workers, represents workers and retirees in the various decision-making bodies of the country.

The Committee observes, however, that section 17 of the Legislative Decree and section 11 of the implementing regulations show that the possibility exists in law for just one of the parties to request disputes to be submitted for arbitration to the National Labour Inspection Office, as was also indicated by the Government in a previous report. In this respect, the Committee repeats that arbitration imposed at the request of only one of the parties is contrary to the principle of voluntary negotiation of collective agreements laid down in Convention No. 98 and, hence, contrary to the autonomy of the parties to bargaining. In the Committee's view, problems of incompatibility with the Convention arise when the law requires collective bargaining to be referred to a higher level (in this case, participation by the Confederation of Workers of Cuba). ***The Committee requests the Government to take measures to amend the legislation so that in case of disagreement between the parties to the collective bargaining process, the intervention by the authorities or the Confederation of Workers of Cuba is not compulsory and that referral to binding arbitration is possible only with the agreement of all the negotiating parties.***

The Committee also referred to the need to amend section 11 of Legislative Decree No. 229 – which states 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” – by deleting the express reference to the Confederation of Workers of Cuba and ensuring the autonomy of the parties to collective negotiations. In this respect, the Committee notes the Government's indication that the methodology for discussion of the draft collective labour agreement is established by the Confederation of Workers of Cuba with the aims and objectives which it is obliged to fulfil in relation to the trade union movement and in conformity with its interests and that it is not for the Government to take measures in this respect. With regard to section 11, the Government points out that this is an affirmation of the fact that it is the trade union which has to prescribe the way in which workers' assemblies are organized and the way in which collective agreements are drawn up and discussed. The Committee considers, however, that section 11 imposes a methodology established by the Confederation of Workers of Cuba on all trade unions under a system of trade union monopoly established by law (see observation on the application of Convention No. 87), and this, together with the existence of provisions that are too detailed as to how collective agreements are to be concluded, do not afford sufficient encouragement to free and voluntary collective bargaining in accordance with *Article 4* of the Convention. ***Consequently, the Committee asks the Government once again to take the necessary measures to amend section 11 of Legislative Decree No. 229 by deleting the express reference to the Confederation of Workers of Cuba and ensuring the autonomy of the parties to collective bargaining.***

The Committee also requested the Government to take measures to repeal section 5 of Legislative Decree No. 229 and section 3 of the implementing regulations under which the National Labour Inspection Office approves the conclusion of collective labour agreements in the units provided for in the budget and in the production and services activities of bodies, sectors, branches and activities that share the same characteristics, when so agreed by the head of the body and the general secretary of the corresponding federation, so as to ensure that full effect is given to the principle of free and voluntary collective bargaining. The Committee notes that the Government reiterates that these sections apply only to exceptional cases involving units in the budget which, with the consent of the head of the entity and of the corresponding federation, decide to request the approval of the National Labour Inspection Office, the aim being to avoid duplicating or copying agreements of centres with similar characteristics so that agreements are adopted to the specific characteristics of each entity. The Committee recalls that the Government indicated, in a previous report, that the provision applied to units in the budget with similar characteristics, such as bakeries, schools, hairdressers, service centres and polyclinics. The Committee considers that the law subjects a wide range of collective agreements to approval by the National Labour Inspection Office and finds this to be contrary to the principle of free and voluntary collective bargaining. ***The Committee asks the Government once again to take the necessary measures to repeal section 5 of Legislative Decree No. 229 and section 3 of the implementing regulations to ensure that full effect is given to the principle of free and voluntary collective bargaining.***

## Cyprus

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1966)**

The Committee notes the Government's report as well as its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 10 August 2006.

The Committee's previous comments concerned the need to amend sections 79A and 79B of the Defence Regulations which grant the Council of Ministers discretionary power to prohibit strikes in the services that they consider essential. The Committee notes with satisfaction that sections 79A and 79B of the Defence Regulations are now repealed by Order No. 366/2006 published in the *Official Gazette* on 22 September 2006.

## Czech Republic

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

The Committee notes the Government's report and its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in 2006. The Committee also notes the comments of the ITUC dated 28 August 2007, on issues already under examination by the Committee.

The Committee recalls that its previous comments concerned the need to amend section 17 of the Act on collective bargaining so as to ensure that balloting for industrial action only takes account of the votes cast and that the required quorum and majority are fixed at a reasonable level.

The Committee notes with interest from the report of the Government that section 17 of the Act on collective bargaining, which deals with the right to strike, has recently been amended so as to lift the obligation to submit the names of the employees who will participate in the strike and ensure that balloting for industrial action only takes account of the votes cast, subject to a quorum requirement of 50 per cent of employees concerned by the 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: 1993)**

The Committee notes the Government's report and its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in 2006 and by the Czech-Moravian Confederation of Trade Unions (CMKOS). ***The Committee also notes the comments of the ITUC dated 28 August 2007, with regard to alleged acts of anti-union discrimination and requests the Government to send its observations thereon.***

The Committee notes the recent adoption of the new Labour Code (Act No. 262/2006), with a view to a better application of the Convention. The Committee notes that according to the latest comments by the ITUC, the new Labour Code opens up new opportunities for collective bargaining both in the public and private sectors.

*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 had taken note in this context of the adoption of Act No. 251/2005 on labour inspection and the possibility of out-of-court settlement of labour law disputes set up through third (neutral) party mediation.

The Committee notes that the ICFTU and the CMKOS refer to frequent cases of violations of trade union rights, such as anti-union practices that clearly undermine freedom of association, especially in newly established companies.

The Committee notes from the Government's reply to these comments, that the labour inspection has not registered any proven case of anti-union discrimination (which is prohibited in the Labour Code) since the entry into force of the Labour Inspection Act No. 251/2005 and that there are only two allegations of anti-union discrimination which are currently under investigation.

***Given the divergence between the information provided by the Government and the comments made by workers' organizations, the Committee 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.***

## 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 notes the comments from the International Trade Union Confederation (ITUC) dated 28 August and 4 September 2007 concerning, in particular, the obstruction of trade union activities in certain administrations and enterprises (ban on holding meetings, ban on access to installations, etc.) and repeating the allegations made by the International Confederation of Free Trade Unions (ICFTU, now ITUC) in 2006 concerning cases of abduction, torture, threats, intimidation and harassment against trade union leaders. In its previous comments, the Committee noted the allegations made by the Confederation of Trade Unions of Congo (CSC) also relating to the arrest of trade unionists and threats by the public authorities towards trade union delegates, particularly in public enterprises. The Committee recalls that a climate of violence in which the murder and disappearance of trade union leaders go unpunished constitutes a serious obstacle to the exercise of trade union rights and that such acts require that severe measures be taken by the authorities. 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 principle of freedom of association (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 29 and 31).

*Noting the seriousness of the allegations, the Committee trusts that the Government will give its full attention to the comments made by the ITUC and the ICFTU and urges it to send its observations on the matters raised. The Committee recalls that in its previous comments it emphasized the need to launch an investigation into the matters raised by the CSC in relation to the cases of arrest and detention.*

*Articles 2 and 5 of the Convention.* In its previous comments, the Committee noted that section 1 of the Labour Code excludes from its scope 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 requested the Government to provide information on the laws and regulations governing magistrates and career employees and officials of the state public services governed by specific conditions of service so as to ascertain their rights relating to the establishment of organizations. It also asked the Government to provide information on the right to establish organizations of career employees in the state public services governed by the general conditions of service. The Committee recalls the Government's indication 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). Pending the amendment of these conditions of service, the Minister for the Public Service issued Order No. CAB.MIN/F.P./105/94 of 13 January 1994 issuing provisional regulations respecting trade union activities within the public administration. This Order was amended by Order No. CAB.MIN/F.P./0174/96 of 13 September 1996. *The Committee once again requests the Government to supply copies of the Orders concerned and take the necessary steps to repeal section 56 of Act No. 81-003 and to ensure the conformity of the legislation with the provisions of the Convention.*

*Article 3.* In its previous comments, the Committee requested the Government to reinstate trade union elections as soon as possible in enterprises and establishments of all types in the Democratic Republic of the Congo and to keep it informed of the measures adopted in this respect. The Committee noted that in April 2004 the Government organized an extraordinary session of the National Labour Council during which a recommendation was formulated calling for an order to be issued lifting the suspension of trade union elections, and that the Council adopted a number of texts, including one establishing the electoral schedule (Ministerial Order No. 12/CAB.MIN/TPS/055 of 12 October 2004). On the basis of this Order, trade union elections were held throughout the country between 1 February and 30 April 2005 and, in view of the high number of enterprises and establishments which did not organize elections, this period was extended until 31 July 2005. The results of the trade union elections were announced on 22 November 2005. However, the Committee noted that, according to the ICFTU, exemptions were granted to certain private communication enterprises, which therefore refused to organize elections. *The Committee requests the Government to take steps to ensure that trade union elections are organized in the near future in the sectors referred to by the ICFTU or, if elections have been held, to provide specific information regarding the election results.*

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

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

1. *Comments of the Trade Union Confederation of the Congo (CSC, now ITUC, International Trade Union Confederation), the World Confederation of Labour (WCL) and the International Trade Union Confederation (ITUC).* The Committee notes with regret that the Government has not replied to the grave issues raised by the ITUC, nor to any of the comments made by the CSC or the WCL 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) failure to comply with collective agreements. *The Committee requests the Government to order independent*

*inquiries into these allegations and to provide specific information on protection against acts of anti-union discrimination in practice (number of complaints made, penalties imposed, duration of procedures, etc.).*

2. *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 once again requests the Government to send a copy of the Order that is adopted on this issue.***

3. *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 career employees and officials of state public services who are governed by specific conditions of service. The CSC indicated in its comments of 31 May 2004 the existence of measures allowing the establishment of mechanisms for the promotion of collective bargaining in the public sector. The Committee noted the Government's reply 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 SYECO and SYNECAT (education sector) in 2005. The Committee inferred that, in practice, there are wage negotiations and agreements in the public sector and it noted that Act No. 81-003 of 17 July 1981 explicitly provides for the establishment of institutions ensuring the representation of the personnel. ***Recalling that collective bargaining should be able to cover all working conditions, and taking into account the ITUC's comments that the Government establishes wages by decree and disregards negotiated agreements, the Committee once again requests the Government to take measures to ensure that the legislation regulates this right, as set out in Articles 4 and 6 of the Convention, for public employees not engaged in the administration of the State.***

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

## Denmark

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

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 observations, it requested the Government to indicate in its next report 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. ***Noting that the Government does not provide information in this respect, the Committee once again requests the Government to provide it in its next report.***

The Committee is also 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.*

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1955)***

The Committee notes the Government's report.

1. *Article 4 of the Convention.* In 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 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 from the Government's latest report that Danish trade unions that are parties to the agreement have since 1997 had the right to be represented in negotiations between the Danish shipowners/organizations of shipowners and foreign trade unions, with a view to ensuring that a negotiated result for the foreign seafarers is in accordance with internationally accepted standards of pay.

According to the previous report by the Government, the 2004 agreement between the social partners and the attached protocol also implied a continuance of special provisions which ensure in greater detail that conclusion of a collective or individual agreement with foreign seafarers without Danish residence was at an internationally acceptable level. The 2004 protocol thus stipulated minimum standards that must be included in collective agreements concluded with foreign trade unions in relation to, for instance, pay, working time, period of service on board, repatriation, sickness, etc., safety and health, holiday and complaint procedures. In order to ensure that the Danish contracting parties could represent a foreign trade union, the 2004 protocol had been extended with a provision to the effect that foreign seafarers on board DIS ships could hold double membership, for example be a member of one of the Danish unions party to the agreement and be, at the same time, a member of a trade union in the home country. These provisions had been incorporated in the agreement of 15 December 2005.

In previous comments, the Committee had taken note of the Government's indication that, if Denmark was to maintain a merchant fleet with quality ships that could compete internationally, there was a continuous need to ensure that DIS constantly constituted an attractive and competitive ships' register.

The Committee had also taken note of the communications of the Danish Confederation of Trade Unions (LO), the 3F and the Confederation of Danish Employers (DA), attached to the Government's report. The 3F indicated that all Danish seafarers' organizations agreed that paragraph 10 of the DIS Act should be amended and that the contact committee agreement did not exist because of the DIS Act but, in spite of the Act, and that it presupposed that participating unions accepted the shipowners' rights under the Act; it therefore could not take the place of necessary amendments to the Act with a view to respecting Conventions Nos 87 and 98. The Committee noted that 3F indicated that neither 3F nor RBF were part of the agreements and that, according to 3F, the present system privileged the number of unions and not their representativity.

In its previous comments, the Committee welcomed the renewal of the agreements between the social partners and the adoption of the 2004 protocol, and, in particular, the new provision to which the Government had referred, 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 underlined that section 10 of Act No. 408 had 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 30 September 2005, out of a total of 8,714 seafarers, 3,042 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.***

2. *Collective bargaining rights of majority organizations.* This issue relates to the application of section 12 of the Conciliation Act and had been raised in 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 its previous comments, the Committee had requested the Government to review the legislation, in consultation with the social partners, and to keep it informed of these consultations.

In its previous report, the Government had indicated that the central organizations, LO and DA, had discussed the rules on the linking of agreements of different occupational sectors and were of the opinion that section 12 should be seen in the light of the wording of *Article 4* of the Convention and that the conciliation service must be said to be "a machinery for voluntary negotiation" as one of its most important purposes was to offer independent assistance in connection with the renewal of collective agreements and recommend concessions which seemed appropriate for a peaceful settlement of a dispute. According to the Government's report, the opinion of the central organizations was underpinned by the fact that it was often a judge who exercised the function, that conciliators were not subject to instructions from the Government, and no financial considerations were taken in connection with submissions of compromise proposals. The Government indicated that the central organizations found that the conciliation service could not be said to be an element in the general exercise of public powers. The Committee noted that section 12 did not bar the social partners from negotiating and exerting their influence. All organizations negotiated the renewal of their own agreements and a compromise proposal could not be made by the Public Conciliator until all bargaining possibilities had been exhausted. The individual member was guaranteed influence in that the compromise was sent out for ballot and the linking rule did not mean that the

collective agreement would apply to the entire sector; it was thus not a matter of an erga omnes principle. The adoption of a compromise proposal did not mean that the agreements concluded lapsed but, on the contrary, that they could be individually maintained. The rules served the purpose of avoiding that a number of occupational fields would become involved in a dispute because a single field that constituted a minority – maybe even a very small minority – was, for some reason or other, dissatisfied with the compromise result and had rejected the proposal. The Government stressed that the linking rule was a necessary element of the special organizational structure of the Danish labour market, characterized by many different agreements in the same enterprise and for the same occupation. On the one hand, it was thus not a matter of a system based on industrial unions but, on the other hand, the agreements for the same occupational field were, typically, negotiated together and at the same time. It was important to stress that a change in this generally well-functioning state of law would require basic changes in the Danish union and bargaining structures; changes that were not wished by any of the parties.

While taking note of the Government's arguments, the Committee stressed in its previous comments that section 12 of the Conciliation Act could, in some cases, have the result of excluding the most representative trade union organization 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 solve it. The Committee requests to be kept informed of any development in this regard. 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.

1. *Comments from workers' organizations.* The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 28 August 2007, reiterating those of the International Confederation of Free Trade Unions (ICFTU, now ITUC) of 2006 concerning violations of the Convention in law (and particularly the new Labour Code) and practice. The ITUC also denounces the brutal repression of strikes, arrests of trade union leaders and the expulsion from the country of the members of an international trade union solidarity mission and an ILO official. The Committee regrets to note that the Government, in a communication of 15 October 2007, confines itself to rejecting the observations made by the ITUC, without providing information on these grave allegations. The Committee recalls that the ICFTU denounced numerous arrests of trade unionists, physical aggression against demonstrators and strikers, measures to banish unionists from their homes, acts of anti-union harassment and, finally, the prohibition to hold trade union elections in the National Mint. The Committee recalls that civil liberties and trade union rights are interdependent and that a truly free and independent trade union movement can only develop in a climate of respect for fundamental human rights.

The Committee also notes the communication dated 11 August 2007 of the General Union of Djibouti Workers (UGTD), also relating to restrictions on trade union rights contained in the new Labour Code.

***The Committee urges the Government to order inquiries into the acts of violence that are denounced and to provide without delay its reply to the observations relating to the very serious acts referred to by the ITUC.***

The Committee notes Case No. 2450 of the Committee on Freedom of Association (348th Report, November 2007, paras 533 to 560) which relates, among other matters, to the issues raised by the ICFTU and the ITUC.

The Committee also notes the discussion which took place in the Committee on the Application of Standards at the 96th Session of the International Labour Conference (June 2007) concerning the application of the Convention by Djibouti. It notes in particular that the Government accepted a direct contacts mission in order to clarify the situation with regard to all the issues raised. ***The Committee trusts that it will be possible for this mission to take place in the near future and that the Government's next report will show real progress in the application of the Convention in both law and practice.***

2. *New labour regulation since 2006.* The Committee notes the adoption of Act No. 133/AN/05/5thL of 28 January 2006 issuing the Labour Code. It notes that, according to the ITUC, this Act, which challenges fundamental rights relating to freedom of association, was prepared and adopted without the participation of the social partners. The Committee notes that, in a communication of March 2007 provided by the Government in the context of Case No. 2450 pending before the Committee on Freedom of Association, the Government indicates that the social partners were fully consulted at all stages of the process. According to the Government, consultations were held on several occasions with the social partners and, although comments were received from the employers' association, the trade union confederations (UDT and UGTD) did not provide their comments on the grounds that they did not have the necessary technical expertise.

While noting that certain of the provisions referred to below are also the subject of observations by the ITUC and the UGTD, the Committee wishes to make the following comments on certain provisions of the new Labour Code:

- sections 41 and 42 of the Labour Code concerning 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 (subsection 8). Section 42 provides in addition that the period during which the employment contract is suspended shall not be counted for the purpose of determining the worker's seniority within the undertaking. In this respect, the Committee considers that the holding of trade union office is not incompatible with paid employment, 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 to join the organization of their own choosing or to hold trade union office (*Article 2 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 of trade union office where such office is incompatible with the demands of work is a matter for negotiation between the parties concerned, who must establish the relevant modalities, and that in any event such suspension cannot be automatic.
- section 214 of the Labour Code, under which a person sentenced “by any court” may not hold office as a trade union leader. In this respect, 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 aptitude and integrity required to exercise trade union office. In this case, the Committee considers that section 214 of the Labour 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, in consultation with the social partners, so as to ensure that only court sentences for offences which by their nature are prejudicial to the integrity of the individual are deemed to be incompatible with the holding of trade union office.***
- section 215 of the Labour Code concerning the formalities for the 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 by-laws and the list of persons responsible for their administration and management; within a period of 30 days following their deposit, copies of the by-laws and the list of persons responsible for the administration and management of the union are transmitted by the labour inspector to the Labour Minister and the Attorney-General of the Republic; the documents are accompanied by a report prepared by the labour inspectorate; the Labour Minister then has 15 days to issue a receipt granting legal recognition to the union; the Attorney-General of the Republic then has 30 days to verify the by-laws 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, Minister of Labour and the union officials concerned of her/his conclusions; any modification to the by-laws 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 recall that *Article 2* of the Convention guarantees the right of workers and employers to establish organizations “without previous authorization” by the public authorities. The Committee therefore considers that national legislation which requires the deposit of the by-laws of organizations is compatible with this provision if it is a mere formality intended to ensure that the by-laws 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, in consultation with the representative organizations of employers and workers, to amend section 215 of the Labour Code so as to guarantee the right to establish workers' and employers' organizations without previous authorization, to remove the provisions which give de facto discriminatory powers to the administration and to ensure that the registration procedure is merely a formality.***

Finally, the Committee refers to its previous comments and also reminds the Government of the need to repeal or amend the following provisions of the legislation:

- section 5 of the Act on associations, which requires organizations to obtain authorization prior to their establishment as trade unions (*Article 2 of the Convention*); and
- section 23 of Decree No. 83-099/PR/FP of 10 September 1983, 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, with a view to restricting 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 (*Article 3 of the Convention*).

*The Committee urges the Government to take the necessary measures, in full consultation with the representative organizations of employers and workers, to revise and amend the legislative provisions, including provisions of the Labour Code, taking into account the above comments. It trusts that the Government will be in a position to indicate the progress achieved in this respect in its next report.*

A request on certain other points is being addressed directly to the Government.

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

The Committee notes the Government's report and the comments from the International Trade Union Confederation (ITUC), the Labour Union of Djibouti (UDT) and the General Workers' Union of Djibouti (UGTD) regarding the anti-union dismissal of numerous trade union leaders and members and concerning acts of anti-union interference.

The Committee once again notes with regret that the Government has not provided any reply to the comments. The Committee reminds the Government that it has the responsibility to prevent all acts of anti-union discrimination and ensure that complaints regarding discriminatory practices of this nature are examined according to a procedure which must be prompt, impartial and considered as such by the parties concerned. *The Committee therefore requests the Government once again to order without delay an independent investigation into the anti-union dismissals and acts of discrimination and interference referred to in the communications from the ITUC, UDT and UGTD, and ensure that the measures and penalties laid down by the legislation are applied if violations of the rights established by the Convention are proven.*

The Committee notes the adoption of Act No. 133/AN/05/5ème L of 28 January 2006 issuing the Labour Code. It notes that the Labour Code prohibits anti-union discrimination and interference and lays down significant penalties (section 290 of the Code). The Committee also notes the establishment, under sections 280–282 of the Code, of the Joint National Committee on Collective Agreements and Wages, the duties of which include issuing opinions and making recommendations with regard to collective labour agreements (section 280 of the Code). *The Committee requests the Government to send a copy of the Decree establishing the structure and procedures of the Joint National Committee on Collective Agreements and Wages and also any relevant information on its work.*

## **Dominica**

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

The Committee takes note of the Government's report. The Committee 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 notes from the Government's report that the Minister for Labour received the recommendations of the Industrial Relations Advisory Committee (IRAC) for the removal of the citrus and coconut industries from the list of essential services (the registered trade unions were consulted and the majority concurred with the IRAC on the matter). Furthermore, the Committee notes the Government's indication that no further action has been taken by the political directorate in this regard and that the Government hopes that when a new committee is appointed another attempt will be made to draw to the attention of the competent authority the need for immediate action on this matter. 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 requests the Government to indicate in its next report the progress made in eliminating citrus and coconut industries from the list of essential services as well as the measures taken or envisaged to amend the list of essential services in respect of the banana industry and the Port Authority or to establish a requirement of a minimum service, in the determination of which relevant employers' and workers' organizations should be involved.*

The Committee has also noted on several occasions that sections 59(1)(b) and 61(1)(c) of the Act empowered the Minister to refer disputes to compulsory arbitration if they concerned serious issues in his or her opinion. The Committee takes note of the Government's statement that there was only one significant dispute referred to compulsory arbitration. 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 requests the Government to indicate in its next report the measures taken or envisaged to amend the legislation in this regard.*

## Dominican Republic

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

The Committee notes the Government's report and the reply to the 2005 and 2006 comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation), which includes information concerning the registration of a trade union and the Haitian workers' right to organize. The Committee also notes the comments of the ITUC of 28 August 2007, which refer to the matters under consideration and the imprisonment of and imposition of excessive fines on two trade union leaders from the National Transport Confederation (CONATRA) and the National Dominican Transport Federation (FENATRADO) for having organized a strike in the transport sector. *The Committee asks the Government to provide its comments in this respect.*

The Committee recalls that it has been commenting for many years on the following legislative matters:

- 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);
- 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);
- the express 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);
- the requirement of 40 per cent of the total number of employees in the institution in order for public servants to be able to establish organizations (section 142(1) of the Regulations adopted under the Civil Service and Administrative Careers Act).

With regard to these legislative matters, the Committee notes the Government's statement to the effect that on 18 July 2007 the Advisory Council of the Secretariat of Labour held a session, within the framework of social dialogue, at which the Government and the social partners decided to work together on the legislative amendments. To this end, a team of three delegates was established for each sector to examine the respective proposals and send them to the National Congress. *While emphasizing that the matters in question have been outstanding for many years, the Committee hopes that the working group will submit its proposals to the National Congress in the very near future, so that the legislation can be amended in pursuance of the provisions of the Convention. The Committee asks the Government to provide information in its next report on any measures taken in this respect and reminds it that technical assistance from the Office remains at its disposal.*

The Committee has also been referring for a number of years to the following matters:

- The opposition of certain enterprises in export processing zones to the establishment of trade unions and the disregard for trade union immunity. In this respect, the Committee notes the Government's statement to the effect that: (1) in the past five years, an average of 12 trade unions have been registered each year in export processing zones; (2) in 2006, within the framework of the "Cumple y Gana" project sponsored by the US Department of Labor, two workshops aimed at employers and workers were held on labour law and satisfactory dispute settlement in the export processing zone sector; (3) a radio and written campaign was launched on labour rights and the fundamental ILO Conventions, with emphasis on freedom of association and collective bargaining; and (4) a dispute settlement system was introduced which allowed for the considerable improvement of relations between enterprises and trade unions.
- Respect for trade union rights on sugar plantations, in particular the right of trade union officers to have access to and meet with workers in accordance with the principles of the Convention. The Committee notes the Government's statement to the effect that, in May 2006, the Secretariat of State for Labour launched a campaign for the promotion, dissemination and observance of labour law in sugar refineries; that the director of the National Labour Inspectorate visited all sugar-producing areas, to which two labour inspectors are assigned on a permanent basis; that there has been a considerable improvement in working conditions in sugar refineries and that work-related entitlements have been paid to the workers of the refineries that were closed down. The Committee notes, however, that the Government does not refer in a specific manner to the observance of trade union rights. *The Committee asks the Government to ensure that full effect is given to the Convention on sugar plantations.*

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

The Committee notes the Government's report. It also notes the comments of the International Trade Union Confederation (ITUC) of 28 August 2007, which refer to various acts of anti-union discrimination. *The Committee asks the Government to send its comments in this regard.*

*Article 4 of the Convention.* 1. *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 notes the Government's statement to the effect that on 18 July 2007, the Consultative Committee on Labour held a meeting with a view to establishing consensual proposals between the social partners and the Government for amending the legislation. ***The Committee regrets to note that despite the amount of time that has elapsed, no specific progress has been made with regard to amending the legislation. The Committee asks the Government to take the necessary steps to bring its legislation fully into line with the provisions of the Convention and to keep it informed of any developments in this respect.***

2. *Coverage of collective bargaining in the public and private sectors in practice.* The Committee notes that the Government has not sent any information in this respect. ***The Committee asks the Government to provide statistics on the collective agreements concluded in the private and public sectors, including in export processing zones, indicating the number of workers covered by these agreements.***

3. *Comments by the ITUC.* The Committee previously noted the comments by the ITUC on the absence of effective sanctions 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 export processing zones and the dismissal of all the founding members of a trade union which the administrative authority had refused to register. In this regard, the Committee notes that the Government has provided information on the campaigns for the promotion, dissemination and observance of labour legislation in sugar refineries, the labour inspections carried out on sugar plantations, the workshops on labour law and the satisfactory settlement of labour disputes in export processing zones, the campaign to disseminate information on labour rights and fundamental Conventions, and the effective registration of the trade union which the administrative authority had previously refused to register, but that it has not provided any concrete information on the allegations made by the trade union. The Committee reminds the Government that in the event of allegations of acts of anti-union discrimination, investigations should be carried out without delay, and that if the allegations are confirmed, sufficiently dissuasive sanctions should be imposed. ***The Committee therefore asks the Government to carry out a full investigation into the matters referred to by the ITUC and to inform it of the outcome. It also requests the Government to provide further information on the absence of effective sanctions for acts of anti-union discrimination.***

## Ecuador

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

The Committee notes the Government's report and observes that it does not contain specific information on the legislative measures that are under examination. The Committee also notes the observations made by the International Trade Union Confederation (ITUC) referring to issues that are under examination by the Committee, particularly in relation to the exercise of the right to strike and the repression by the police and the army of a demonstration organized by the trade union confederations and a strike in the banana sector on 11 February 2006. ***The Committee requests the Government to provide its comments in this respect and on the observations made by the International Confederation of Free Trade Unions (ICFTU, now ITUC), which it noted in its previous observation.***

#### ***Pending matters***

The Committee recalls that for many years its observations have been referring to the following matters:

- the need to reduce the minimum number of workers (30) required to establish associations, works committees or assemblies to organize works committees (sections 450, 459 and 466 of the Labour Code);
- the need to amend section 60(g) of the Civil Service and Administrative Careers Act prohibiting the establishment of unions so as to ensure that public servants have the right to establish organizations to further and defend their occupational and economic interests. The Committee notes with interest the abolition of this prohibition by virtue of the adoption of the codified version of the Framework Act respecting civil service and administrative careers and the unification and standardization of public sector remuneration. ***The Committee requests the Government to provide information on the number of associations which have been established to further and defend the interests of public servants, the sectors covered and the approximate number of members under the terms of the recently adopted codified version of the Framework Act respecting civil service and administrative careers and the unification and standardization of public sector remuneration, which amends section 60(g) of the Civil Service and Administrative Careers Act;***
- the need to amend article 35(10) of the Political Constitution, which prohibits the stoppage on any grounds of public services which may not be considered essential in the strict sense of the term (education, social security, the refining, transport and distribution of fuel and public transport). The Committee also notes that section 26(9) of the codified version of the Framework Act respecting civil service and administrative careers and the unification and standardization of public sector remuneration, which was adopted recently, lays down the same prohibition;

- the need to amend section 522(2) 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;
- the implicit denial of the right to strike by federations and confederations (section 505 of the Labour Code);
- the imposition of prison sentences for participation in illegal work stoppages or illegal strikes (Decree No. 105 of 7 June 1967); and
- the requirement to be of Ecuadorian nationality to serve as a trade union officer (section 466.4 of the Labour Code).

*Noting that it has been commenting on these provisions for many years, the Committee hopes that the Government will take the necessary measures in the near future to bring the legislation into full conformity with the Convention. The Committee requests the Government to keep it informed of any development in this respect.*

#### **Draft constitutional reform**

The Committee notes the Government's indication that the Minister of Labour and Employment announced that draft provisions would be presented to the President for inclusion in the new Political Constitution of the Republic in the section on "Labour" for analysis and possible submission for consideration by the Constituent National Assembly. The Government is facilitating the passage of the draft text, section 32(11) of which maintains the prohibition set out in the current Constitution which has been criticized by the Committee relating to the exercise of the right to strike in non-essential public services. The Committee reiterates its previous comments. *The Committee requests the Government to keep it informed of developments relating to the draft text of the new Political Constitution and expresses the hope that it will be in full conformity with the provisions of the Convention.*

#### **Draft reform of the Labour Code**

The Committee was informed previously of the existence of a draft text to reform the Labour Code which had been formulated with ILO assistance. The Committee understands that the examination of this text is suspended in view of the constitutional reform process. *In these circumstances, the Committee requests the Government to keep it informed of developments relating to this draft legislation.*

*Finally, the Committee reminds the Government that, in the context of the current legislative and constitutional reforms, it may benefit from ILO technical assistance with a view to ensuring the conformity of the reforms with the Convention.*

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

The Committee notes the Government's report and observes that it does not contain specific information relating to the legislative issues that have been under examination. The Committee also notes the observations of the International Trade Union Confederation (ITUC) according to which the penalties established in law against violations of the labour legislation are not sufficiently dissuasive, which prevents workers from being able to exercise their trade union rights. *The Committee requests the Government to provide its observations in this respect.*

*Pending matters.* The Committee once again recalls that it has been making comments for several years on the following matters:

- the need to include provisions in the legislation that guarantee protection against acts of anti-union discrimination in relation to recruitment;
- 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 including not more than 50 per cent of the workers subject to the Labour Code may negotiate, on their own or jointly, on behalf of their own members;
- the need for public teaching staff and the heads of educational institutions, and for staff who perform technical and occupational 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 benefit from the right to organize and collective bargaining, not only at the national level, but also at the local and establishment levels. The Committee noted in its previous observation that, under the terms of section 5(d) of Act No. 94, teachers enjoy the right to freedom of association for the purposes of studying, participation in the planning and implementation of education policy and for the defence of their occupational interests. The Committee nevertheless notes that the legislation does not establish the right of teachers to collective bargaining. The Committee recalls that all personnel in the public administration who are not engaged in the administration of the State should enjoy the right to collective bargaining and, in this respect, considers that teachers are not engaged in functions related to the administration of the State and that they should therefore be able to engage in collective bargaining with a view to regulating their terms and conditions of employment through collective agreements;
- the need to amend section 3(g) of the Civil Service and Administrative Careers Act so that workers in government departments and other public sector institutions and in private sector institutions that pursue social or public objectives enjoy the rights guaranteed in the Convention. The Committee notes with interest the deletion of this

provision as a result of the recent adoption of the codified version of the Organic Act respecting civil service and administrative careers and the unification and standardization of public sector remuneration.

*Noting that it has been commenting on these provisions for many years, the Committee hopes that the Government will take the necessary measures in the near future to bring the legislation into full conformity with the Convention. The Committee requests the Government to keep it informed of any developments in this respect.*

Furthermore, in its previous observation the Committee requested the Government to provide a copy of the Bill on the Organic Act respecting the civil service and administrative careers and the unification and standardization of public sector remuneration and the ruling by the Constitutional Court on its conformity with the Constitution. The Committee notes that the Government has provided a copy of both documents. The Committee notes that the above Organic Act was declared constitutional and that subsequently the codified version of the Organic Act respecting the civil service and administrative careers and the unification and standardization of public sector remuneration was approved supplementing and replacing the Bill, which was also declared constitutional. *While noting that the above text repeals the prohibition on the establishment of trade unions, the Committee requests the Government to indicate whether, under the terms of the text, public servants and public sector workers in general may negotiate collective agreements and, if so, to explain the envisaged procedure for wage bargaining.*

The Committee recalls that it noted previously that section 94 of Chapter XII of the Basic Act of 29 February 2000 on the economic transformation of Ecuador, which relates to amendments to the Labour Code, explicitly prohibits any revision or increase of the supplementing bonus or the compensation for cost-of-living increases, or the introduction of any other wage or remuneration supplement. The Committee also observed that section 95 of the same Act provides that the current amendments to the Labour Code are mandatory, unless there are provisions to the contrary in existing collective agreements or legally concluded contractual arrangements, for as long as they remain in force and unless otherwise agreed. *In this respect, the Committee once again requests the Government to indicate in its next report whether, under sections 94 and 95 of the above Act, employers or their organizations and workers' organizations continue to be subject to the limitations referred to above in freely concluding wage adjustment clauses through collective agreements.*

#### *Draft constitutional reform*

The Committee notes the Government's indication that the Minister of Labour and Employment announced that draft provisions would be submitted to the President for inclusion in the new Political Constitution of the Republic in the section on "Labour" for analysis and possible submission for consideration by the Constituent National Assembly. The Government is facilitating the examination of the draft text of this section, some of the provisions of which are not in full conformity with the Convention:

- section 32(13) provides that employers with 15 or more workers who are members of a trade union organization shall be obliged to conclude a collective agreement when the organization so requests. In this respect, the Committee recalls that *Article 4 of the Convention* establishes the obligation to promote collective bargaining; and
- section 32(14) provides that collective disputes shall be submitted to conciliation and arbitration tribunals, which shall be the only bodies competent for the classification, examination and resolution of claims. In this respect, the Committee recalls that, in general terms, recourse to compulsory arbitration when the parties have not reached an agreement through collective bargaining is only acceptable in the context of essential services in the strict sense of the term (that is, those the interruption of which would endanger the life, personal safety or health of the whole or part of the population) or in the case of public servants engaged in the administration of the State.

*The Committee requests the Government to keep it informed of developments relating to the draft text of the new Political Constitution and hopes that the latter will be in full conformity with the provisions of the Convention.*

#### *Draft reform of the Labour Code*

The Committee has been informed of the existence of a draft reform of the Labour Code, formulated with the assistance of the ILO. The Committee understands that its examination is suspended in view of the constitutional reform process. *This being the case, the Committee requests the Government to keep it informed of developments relating to the examination of this legislative text.*

#### *Pending comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC)*

The Committee recalls that in its previous comments it requested the Government to send its observations concerning the comments made by the ICFTU concerning the lack of collective bargaining rights of subcontracted or outsourced workers, the use of "blacklists" in the province of Los Ríos and anti-union dismissals.

The Committee notes that the Government provides a copy of the Act amending the Labour Code (Act respecting outsourcing and supplementary services) of 23 June 2006, regulating employment mediation services and the outsourcing of supplementary services, and setting out the obligations of new enterprises devoted to employment mediation and the users of such services. *The Committee requests the Government to confirm that workers in enterprises engaged in employment mediation and the outsourcing of supplementary services enjoy the right to organize and collective bargaining. The Committee also requests the Government to reply to the ICFTU's other comments.*

Finally, the Committee reminds the Government that in the context of the current legislative and constitutional reforms it may benefit from the technical assistance of the ILO with a view to ensuring their conformity with the Convention.

## Egypt

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

The Committee notes the Government's report as well as its reply to the comments submitted by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in 2006 on the application of the Convention. It further notes the comments submitted by the ITUC in a communication of 28 August 2007, which mainly refer to matters previously raised by the Committee as well as to acts of government interference in union elections and violent intervention by security forces against trade union members participating in the elections. **The Committee requests the Government to transmit its observations on the ITUC's allegations.**

The Committee recalls that for several years its comments have been referring to the discrepancies between the Convention and the national legislation – i.e. the Trade Union Act No. 35 of 1976, as amended by Act No. 12 of 1995, and the Labour Code No. 12 of 2003 – on the following points:

*Article 2 of the Convention. 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 Committee notes that the Government indicates that the trade union structure is one the workers themselves had chosen upon the realization that disparate trade union set-ups are ineffective and do not constitute a pressure group aimed at meeting their interests. In these circumstances the Committee once again recalls that Act No. 35, and in particular sections 7, 13, 14, 17 and 52, are at variance with *Article 2* of the Convention since trade union unity, directly or indirectly imposed by law, runs counter to the standards expressly laid down in the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 91). **The Committee requests the Government to amend sections 7, 13, 14, 17 and 52 of Act No. 35 of 1976 (as amended by Act No. 12 of 1995) so as to secure the right of workers to establish and join organizations of their own choosing at all levels outside the existing trade union structure.**

*Article 3. 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 (sections 41, 42 and 43 of Act No. 35, as amended by Act No. 12).* The Committee recalls that procedures for the nomination and election to trade union office should be fixed by the rules of the organization concerned, without any interference by public authorities or by the single trade union central organization designated by the law. Legislative provisions can require, in a manner compatible with the Convention, that organizations specify in their statutes and rules the procedure for appointing their executive bodies, and rules ensuring the proper conduct of the election process. Furthermore, if any supervision is deemed necessary, it should be exercised by a judicial authority (see General Survey, op. cit., paragraphs 114 and 115). Finally, the Committee would like to point out that any removal or suspension of executive bodies which is not the result of an internal decision of the trade union, a vote by members or normal judicial proceedings, seriously interferes in the exercise of the trade union office to which officers should be freely elected by members of their trade union. Legislative provisions which permit the appointment of temporary administrators by the single central organization are incompatible with the Convention. Measures of this kind should only be possible through judicial proceedings (see General Survey, op. cit., paragraphs 122 and 123). **The Committee thus expresses the firm hope that the Government will take the necessary measures to amend the legislation so as to ensure that each workers' organization is able to elect its representatives in full freedom in accordance with Article 3 of the Convention. It requests the Government to keep it informed of the measures taken or envisaged in this regard.**

*The control exercised by the Confederation of Trade Unions over the financial management of trade unions (sections 62 and 65 of Act No. 35, as amended by Act No. 12).* The Committee notes the Government's statement that the funding structure in place does not contravene any international convention or law, and is the main source of funding for trade unions at the international level. The Committee nevertheless recalls that it had previously pointed out that workers' organizations should have the right to organize their administration without any interference from public authorities, which means, among other things, that they should enjoy autonomy and financial independence. The control granted by the law to a single central organization constitutes, as such, interference with the free functioning of workers' organizations, contrary to *Article 3*. **The Committee therefore once again requests the Government to take the necessary measures to ensure that section 62, which provides that the Confederation shall determine the financial rules of trade unions and obliges lower level unions to pay a certain percentage of their income to higher level organizations, and section 65, which provides that the Confederation shall control all trade union activities, are amended so that workers' organizations have the right to organize their administration, including their financial activities, without interference, in accordance with Article 3 of the Convention.**

*Right to strike.* The Committee notes the Government's statement that strikes are prohibited at strategic undertakings, as a legitimate and necessary safeguard to protect public safety and security; the Government adds that the restrictions placed by the law on the holding of strikes are measures similarly aimed at ensuring public security and the

country's economic welfare. In this respect, the Committee recalls that the right to strike may be restricted or prohibited in the public service 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). ***In these circumstances, the Committee once again requests the Government to take the necessary measures to amend the legislation concerning:***

- 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 for the prior approval of the Confederation of Trade Unions for the organization of strike action (section 14(i) of the same Act);
- restrictions on the right to strike and recourse to compulsory arbitration in services which are not essential in the strict sense of the term (sections 179, 187, 193 and 194 of the Labour Code); and
- penalties for breaches of section 194 of the Labour Code (section 69(9) of the Code).

The Committee is also addressing a request directly to the Government.

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

The Committee notes the Government's report. It further notes the comments submitted by the International Trade Union Confederation (ITUC) in 2007, which principally refer to matters previously raised by the Committee. ***The Committee requests the Government to transmit its observations on those comments.***

Previously, the Committee had taken note of the allegations made by the ITUC in 2006 concerning provisions of the 2002 law on special economic zones that exempt investment companies newly established in the zones from the legal provisions on the organization of labour, and to anti-union acts in a number of enterprises in the zones, including pressure on members to leave unions. The ITUC had 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. Moreover, the ITUC alleged several instances of anti-union discrimination, including the dismissal, or the threatening with dismissal, of trade unionists in different enterprises. In this connection, the Committee notes the Government's indication that, in cases where employers are said to have forced the resignation of workers, section 119 of the Labour Code provides that all resignations must be in writing, and that the worker concerned shall have the right to change his or her mind regarding the resignation tendered. The Government further states that employers who force workers to sign resignation letters in violation of section 119 may be punished by a fine of 200–500 Egyptian pounds per worker, with multiple fines for repeated violations. The Committee notes, nevertheless, that the Government has not provided any information respecting investigations into the acts of anti-union discrimination alleged by the ITUC. In this connection, the Committee recalls that the existence of general legal provisions prohibiting acts of anti-union discrimination is inadequate if they are not accompanied by effective and rapid procedures to ensure their application in practice. ***Accordingly, the Committee requests the Government to take the necessary measures to initiate an impartial inquiry into the matters referred to by the ITUC.***

*Article 4 of the Convention.* The Committee takes note of the Government's statement that the levels, mechanisms, and legal system for collective bargaining are determined by Labour Code No. 12 of 2003. The Government adds that collective agreements that have been concluded and that are not contrary to the law shall be accepted, and that, in 2005, 21 collective agreements were concluded – including one agreement at the national level. While taking note of the Government's indications in this respect, the Committee notes with regret that the Government has not substantially replied to its previous comments referring to several restrictions on collective bargaining. The Committee trusts that the Government will provide full information in its next report on the matters previously raised concerning collective bargaining, which are 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 requested the Government to provide information on the scope of this section and the impact the broad wording of this section may have on the implementation 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 had requested the Government to amend section 158 of the new Labour Code so as to ensure that the approval of a collective agreement may only be refused if: (1) it is tainted with a procedural flaw; or (2) it does not conform to the minimum standards laid down by the labour legislation;
- the Committee had requested the Government to take the necessary measures to repeal sections 148 and 153 of the Labour Code, as these provisions enable higher level organizations to interfere in the negotiation process conducted by lower level organizations, and had also requested the Government to take the necessary measures to amend the Labour Code in order to enable the parties to have recourse to arbitration only by mutual agreement (articles 179 and 187, in conjunction with sections 156 and 163 of the Labour Code).

*The Committee expresses the hope that the Government will take the necessary measures to bring the legislation into full conformity with the Convention and requests the Government to keep it informed of the progress made in this regard.*

Finally, the Committee takes note of the Labour Consultative Council, established in 2003 for the purpose of consultation and collaboration with the social partners. *Noting that the Labour Consultative Council's functions include, among others, the issuance of opinions on bills related to labour relations and comments on international labour Conventions before their signature, the Committee expresses the hope that this body will be associated with the process of legislative reform.*

## Equatorial Guinea

### **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 notes the comments from the International Trade Union Confederation (ITUC) dated 28 August 2007 concerning legislative issues which are under examination and denouncing once again the administrative authority's refusal to register a number of trade unions, including the Trade Union of Workers of Equatorial Guinea (UST), the Independent Services Union (SIS), the Teachers' Trade Union Association (ASD) and the Agricultural Workers' Organization (OTC). The Committee recalls that it noted that, owing to the lack of a trade union tradition, there were still no workers' unions operating in the country. The Committee expresses its concern at the circumstances described above and reminds the Government that, under the provisions of *Article 2 of the Convention*, all workers without distinction shall have the right to establish trade union organizations of their own choosing. *The Committee requests the Government to register without delay the trade union organizations the registration of which was refused and keep it informed of the measures taken or envisaged to ensure that workers are able to establish organizations of their own choosing.*

With reference to its previous comments, the Committee recalls that it asked the Government to:

- amend section 5 of Act No. 12/1992, which provides that sectoral employees' organizations shall bring together employees of two or more enterprises engaged in similar activities, so as to allow the establishment of 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 50 employees as a minimum, in order to reduce the number of workers required to a reasonable level;
- confirm that, as a result of the revision of the Fundamental Act in 1995 (Act No. 1 of 1995), the right to strike is recognized in public utilities and is exercised in 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;
- state whether public servants who do not exercise authority in the name of the State enjoy the right to strike.

*The Committee requests 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 reply to the requests for information. The Committee requests the Government to keep it informed of all measures taken in this respect. Finally, the Committee points out to the Government that it may seek technical assistance from the Office.*

[The Government is asked to supply full particulars to the Conference at its 97th Session and to reply in detail to the present comments in 2008.]

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

The Committee notes that no report has been received from the Government.

*Article 4 of the Convention.* 1. *Collective bargaining.* The Committee notes the comments made by the International Trade Union Confederation (ITUC), dated 28 August 2007, referring in particular to the impossibility of establishing any trade union organization which the authority considers to be "too independent". The Committee emphasizes once again that the existence of trade unions is a prerequisite for the application of the Convention and for exercising the right to collective bargaining. *The Committee urges the Government once again to adopt without delay the necessary measures to create appropriate conditions for the establishment of trade unions which can engage in collective bargaining with a view to regulating conditions of employment. The Committee reminds the Government that it may avail itself of the technical assistance of the Office.*

2. The Committee also recalls that in its previous observation it noted that section 6 of Act No. 12/1992 on trade unions and collective labour relations provides that the organization of officials of the public administration shall be regulated by a special Act and that the Act has not yet been adopted. *The Committee requests the Government once again to indicate whether the special Act has been adopted and ensures public officials' right to organize, and to*

*provide detailed information on the application of the Convention with regard to public officials who are not engaged in the administration of the State.*

3. *The Committee requests the Government to reply to the comment by the ITUC to the effect that no provisions exist for protecting workers against acts of anti-union discrimination.*

[The Government is asked to supply full particulars to the Conference at its 97th Session and to reply in detail to the present comments in 2008.]

## Eritrea

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

The Committee notes the Government's report. With reference to the communication of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) of 10 August 2006 concerning the arrest of three trade union leaders in 2005, the Committee notes from Case No. 2449 concerning Eritrea pending before the Committee on Freedom of Association that the three trade union leaders were released in April 2007 (see 347th Report). The Committee recalls that the arrest and detention of trade unionists without any charges being laid or court warrants being issued constitutes a serious attack on trade union rights.

Finally, the Committee notes the comments of the ITUC of 28 August 2007, referring to legislative issues raised by the Committee in a request addressed directly to the Government.

### **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 28 August 2007, which refer to the legislative issues under examination by the Committee, in particular, restrictions to trade union rights in the public sector.

*Articles 1 and 2 of the Convention.* 1. In its previous comments, the Committee 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.). The Committee notes the Government's indication that in line with the provisions of the Convention, trade union leaders are well protected in Eritrea. Section 28(3) of the Labour Proclamation provides for reinstatement in case of an unjustifiable dismissal. The Government states, however, that the possibility to broaden the application of section 23 of the Labour Proclamation, so as to bring it in conformity with *Articles 1 and 2* of the Convention, was being considered by the Minister of Labour and Human Welfare. The Committee recalls that the Convention requires 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 (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 212). ***The Committee hopes that section 23 of the Labour Proclamation will be amended accordingly in the near future. The Committee requests the Government to keep it informed of the measures taken or envisaged in this regard.***

2. The Committee recalls that it had previously considered that a fine of 1,200 nafka, 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' and workers' organizations in each other's internal affairs was deemed to become severe so as to attract higher penalties than those provided for in section 156 of the Labour Proclamation. 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 regrets that the Government confines itself to stating that the Ministry of Labour and Human Welfare is studying the possibility of bringing the legislation into conformity with *Articles 1 and 2* of the Convention. The Committee recalls once again that the existence of general legislative provisions prohibiting acts of anti-union discrimination is not enough, if they are not accompanied by effective and rapid procedures to ensure their application in practice (see General Survey, op. cit., paragraph 214). ***The Committee hopes that the legislative amendments will take into account the Committee's observations and requests the Government to keep it informed of the measures taken or envisaged in this respect.***

*Articles 1, 2, 4 and 6.* 1. In its previous comments, 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 indication that drafting of a

regulation, which would adequately deal with different working conditions of domestic employees, needs sufficient time and effort; while this question is under consideration by the Ministry of Labour and Human Welfare, it will take time before a comprehensive regulation with regard to domestic employees is developed. *The Committee requests the Government to keep it informed of any development in this regard.*

2. The Committee had further requested the Government to provide specific information concerning the status of the draft Civil Service Proclamation. The Committee notes the Government's indication that the drafting of the Civil Servants' Code (which would guarantee the right to organize to civil servants) reached its final stage and will be communicated to the ILO once adopted. *The Committee hopes that the Government will take the necessary measures, in consultation with the social partners, in order to improve its legislation in respect of the matters raised above and will 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 that the Government's report has not been received.

The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 28 August 2007 reiterating the 2006 comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC) concerning issues already raised by the Committee on the restrictions to the right to strike of public servants. The Committee notes the Government's communications in reply to the ICFTU's comments and regrets that no information was provided by the Government on the question of the right to strike of public servants.

The Committee recalls that for a number of years it had been raising the issue of the prohibition of the right to strike in government institutions and other state or local authority departments (section 21(1) of the Collective Dispute Resolutions Act (1993)). It had also been requesting the Government to provide a "list of enterprises and agencies which satisfy the primary needs of the population and economy", where minimum services must be maintained during a strike (section 21(3) and (4) of the Collective Dispute Resolutions Act). The Committee recalls that in its previous direct request, the Government had indicated that amendments to the Act, which would ensure that strikes in the public service would be prohibited only with regard to public servants exercising authority in the name of the State and would provide for the list of services where the rights to strike would be restricted (essential services), were about to be adopted. *The Committee hopes that the Collective Dispute Resolutions Act will soon be amended and requests the Government to keep it informed in its next report on the progress made in this respect.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1994)**

The Committee notes the Government's report. It further notes the comments of the International Trade Union Confederation (ITUC) concerning the allegations of violation of trade union rights and the Government's reply thereon. In particular, the Committee notes that according to the Government, two cases in connection with the violation of trade union rights were examined by the tripartite labour dispute committees of the National Labour Inspectorate and no such cases were brought before the courts in 2006–07.

## Ethiopia

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

The Committee notes the Government's report. The Committee regrets that the Government's report is limited to the indication of legislative provisions which, according to the Government, ensure the application of the Convention, despite the fact that the Conference Committee on the Application of Standards, after noting the non-application of the Convention over many years, had requested the Government in June 2007 to provide detailed information to the Committee of Experts.

The Committee regrets that the Government provided no reply to the previous comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) and the Education International (EI), which concerned similar allegations and specifically the following: (1) Ethiopian Teachers' Association's (ETA) offices closed, documents and electronic equipment confiscated from offices in 2005 and its financial assets frozen since 1993; (2) nine teachers from the ETA's Addis Ababa branch arrested and two badly beaten on 25 September 2005 following a meeting to discuss preparations for World Teachers' Day; (3) approximately 24 teachers/ETA members detained in November 2005; (4) charges including conspiracy, armed insurrection, high treason and genocide brought against ETA's leaders carrying sentences ranging from three years to the death penalty; (5) 58 teachers and ETA members believed to be still in prison, denied release on bail and prevented from meeting their lawyers at the end of 2005. The Committee takes note of the comments of the ITUC dated 28 August 2007 on the application of

the Convention referring to the issues raised by the Committee above and alleging violations of teachers' trade union rights (creation of a union controlled by the Government, disruption of trade union meetings, harassment, arrests, detention, torture and abduction of members of the ETA).

Furthermore, the Committee takes note of the discussion held on the application of the Convention in the Conference Committee in June 2007. The Committee notes the observations of the Government provided during the discussion on the allegations concerning the ETA with regard to the detention of some of its members, the alleged closure of its office and the alleged confiscation of the association's property and documents provided by the Government to the Conference Committee. According to the Government, the allegations that it was supporting one ETA over the other, illegally transferring ETA union funds, detaining members of the other association and confiscating its property were utterly false and unfounded. Concerning the alleged detention of Mr Kebede, Chair of the Addis Ababa's branch of the ETA, the Committee notes the Government's statement that in April 2007, the Federal High Court ruled that Mr Kebede was to be released without charge, as he had no case to answer to. The Government indicated that there were no teachers in custody. While welcoming the acquittal and release of Mr Kebede and his colleagues, the Committee expresses deep concern over the new allegations made relating to recent arrests of trade unionists, their torture and mistreatment when in detention, and continuing intimidation and interference. The Committee recalls that when disorders have occurred involving loss of human life or serious injuries, 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 actions. Judicial inquiries of this kind should be conducted as promptly and speedily as possible, since otherwise there is a risk of de facto impunity which reinforces the climate of violence and insecurity and which is therefore highly detrimental to the exercise of trade union activities (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 29). ***The Committee urges the Government to conduct a full and independent inquiry without delay into all of the allegations made by the ITUC and earlier by the ICFTU and EI and to keep it informed of the outcome. The Committee firmly encourages the Government to accept a direct contacts mission to the country, as requested by the Conference Committee on the Application of Standards and the Committee on Freedom of Association.***

The Committee recalls that in its previous comments, it had addressed the following matters.

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations of their own choosing.* The Committee had previously noted that according to the Labour Proclamation of 2003, by virtue of its section 3, was not applicable 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, managerial employees, as well as to employees of state administration, judges and prosecutors, who were governed by special laws. ***Recalling that the only exceptions authorized by Convention No. 87 are the members of the police and armed forces, the Committee once again requests the Government to indicate how the right to organize of the abovementioned categories of workers is ensured in law and in practice and to transmit with its next report any specific legislation in this respect.***

The Committee notes Case No. 2516 pending before the Committee on Freedom of Association. It notes, in particular, that teachers employed in the public sector and civil servants are excluded from the right to form and join trade unions and that the Government is in the process of revision of the Civil Servant Proclamation, which would protect and guarantee the right of civil servants (including teachers in public schools). ***The Committee therefore urges the Government to ensure the right to freedom of association of civil servants, including teachers in the public sector, and to keep it informed of any progress made in this respect.***

*Article 3. Right of workers' organizations to organize their programme of action without interference from public authorities.* The Committee had previously noted that air transport and urban bus services were listed as essential services in which strike action is prohibited (section 136(2) of the Labour Proclamation). The Committee considers that these services do not constitute essential services in the strict sense of the term. ***The Committee therefore suggests that the Government give consideration to the establishment of a system of minimum service in these services 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. The Committee requests that the Government take the necessary measures so that the abovementioned services are deleted from the list of essential services and to keep it informed of the measures taken or envisaged in this respect.***

The Committee had previously raised a concern over the compulsory arbitration imposed at the request of one party. The Committee had noted that section 143(2) of the Labour Proclamation allowed the aggrieved party to the labour dispute to take the case to the Labour Relations Board for arbitration or to the appropriate court. In this case, the strike is considered unlawful (section 160(1)). In the case of essential services, as listed in section 136(2), the dispute is referred to an ad hoc board for arbitration (section 144(2)). The Committee recalls 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 should only be allowed upon the request of both parties. ***The Committee therefore once again requests the Government to amend its legislation so as to bring it into conformity with the Convention and to keep it informed of the measures taken or envisaged in this respect.***

The Committee had previously noted that section 158(3) of the Labour Proclamation concerning a strike ballot provided that 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. The Committee recalls that, if the legislation requires a vote by

workers before a strike can be held, it should be ensured that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level (see General Survey, op. cit., paragraph 170). ***The Committee once again requests the Government to amend section 158(3) so as to lower the quorum required for a strike ballot and to keep it informed of the measures taken or envisaged in this respect.***

*Article 4. Dissolution of trade unions.* The Committee had also noted that section 120(c) of the Labour Proclamation allows the cancellation of an organization's certificate of registration where an organization was found to have engaged in activities which were prohibited under the Labour Proclamation. As the Committee has already noted above, some of the provisions of the Labour Proclamation restrict the right of workers to organize their activities contrary to the Convention. ***It therefore requests the Government to ensure that these provisions are not invoked to cancel an organization's registration until they have been brought into conformity with the provisions of the Convention.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)**

The Committee notes the Government's reports received in 2006 and 2007. The Committee further notes the comments of the International Trade Union Confederation (ITUC) dated 28 August 2007 referring to the issues raised by the Committee below and reiterating the 2006 comments of the Education International (EI) concerning specific violations of the Convention regarding teachers' trade union rights in the public sector, including interference in trade union activities of the Ethiopian Teachers Association (ETA) by way of creation and control by the Government of a teachers' trade union, and the harassment of teachers (dismissals, transfers, etc.) in connection with their union affiliation. The Committee regrets that no observation thereon was provided by the Government. The Committee recalls that governments should refrain from interference in the establishment and functioning of trade unions. ***It therefore requests the Government to provide detailed information on the EI's and ITUC's allegations with its next report.***

*Scope of application of the Convention.* The Committee had previously noted that, according to its section 3, Labour Proclamation No. 377/2003 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 provide information about the trade union rights of the abovementioned categories of workers. The Committee notes the Government's explanation that the first type of contracts are not covered by the labour proclamation because these types of contract are established solely for the purpose of upbringing or treatment of persons involved, once the person is totally rehabilitated or the child reaches maturity, the contract is terminated. As for the second type of contracts, i.e. those concluded for personal service, the Government indicates that, pursuant to section 3(3)(c), the Council of Ministers is expected to issue a regulation governing this type of contract of employment. The regulation would address the trade union rights of this category of workers. The Committee considers that all workers, whether they are employed on a permanent basis, for a fixed term or as contract employees, should have the rights afforded by the Convention and once again recalls that the only exceptions authorized by Convention are the members of the police and armed forces, and civil servants engaged in the administration of the State. ***The Committee requests the Government to take the necessary measures to ensure that categories of workers 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. The Committee requests the Government to keep it informed of the measures taken or envisaged in this respect.***

*Articles 2 and 3 of the Convention.* In its previous comments, 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 *Article 2* of the Convention. The Committee notes that the Government reiterates its previous statement to the effect that section 14(1) of the Labour Proclamation adequately protects against acts of interference. The Committee observes that this legislative provision deals with trade union rights for individual workers, while *Article 2* of the Convention requires that protection be granted to organizations of workers and employers against acts of interference by each other or each other's agents and, in particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or their organizations. ***Therefore, the Committee reiterates its previous request and asks the Government to keep it informed of the measures taken or envisaged to amend the legislation so as to bring it into conformity with the above principle.***

*Article 4. Collective bargaining.* The Committee had previously 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. In view of the absence of the Government's reply on that issue, the Committee considers that this provision does 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 could therefore in some cases not be conducive to promoting collective bargaining. The Committee also considers that it is up to the parties to decide on the moment when the collective agreement becomes

inapplicable after the date of its expiration. *The Committee therefore once again requests the Government to take the necessary measures to amend its legislation so as to bring it into full conformity with the Convention and to keep it informed of the measures taken or envisaged in this respect.*

The Committee had further taken note of article 4 of the draft regulation concerning employment relations established by religious or charity organizations, which provided that “employment relation established by religious or charity organizations with a person 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”. The Committee once again recalls that collective bargaining should be promoted also in respect of these categories of workers and that no restrictions on the scope of bargaining should be imposed on workers by religious or charity institutions. *The Committee requests the Government to indicate whether this draft was brought into conformity with the Convention.*

*Articles 4 and 6.* In its previous observation, the Committee had noted the Government’s statement to the effect that efforts were being made to explore experiences of other countries, with a view to draft, in due course, the legislation guaranteeing the right of civil servants, as well as of public teachers – who, contrary to privately employed teachers, to whom the right to unionize and engage in collective bargaining is guaranteed, can only form professional associations – to defend their occupational interests through collective bargaining. *The Committee once again expresses the hope that legislation in this respect will be adopted without delay. It requests the Government to keep it informed of 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 takes note of the Government’s report as well as its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in a communication of 10 August 2006 mainly concerning issues already raised. The Committee also notes the comments made by the ITUC in a communication dated 28 August 2007 with regard to violations of the Convention in 2006. *The Committee requests the Government to provide its observations on the ITUC comments.*

The Committee takes note of the text of the Employment Relations Act No. 36 of 2007 (ERA) which went into effect on 1 October 2007 and repealed the Trade Unions Act, the Trade Disputes Act, the Trade Union (Recognition) Act and the Employment Act (section 265 of the Employment Relations Act).

*Trade union registration.* 1. In its previous comments the Committee had requested that the Government limit the Registrar’s discretionary power to approve a trade union amalgamation (sections 42 and 46 of the Trade Unions Act). The Committee notes with satisfaction that section 123 of the ERA limits the Registrar’s power to refuse an application for amalgamation to cases where the proposed rules of the amalgamated union do not make adequate provision for all matters enlisted in the Schedule to the Act or where any the purposes of the trade union is unlawful. Moreover, section 139 of the ERA provides for a right to appeal the decision of the Registrar to the Employment Relations Tribunal.

2. The Committee notes that in its comments, the ICFTU refers to delays in the registration of trade unions since the previous legislation did not provide for a time frame within which the registration should be concluded. The Committee notes with satisfaction that section 120(2) of the ERA establishes a 21-day deadline from receipt of an application for registration within which the Registrar must decide on the application.

*Right to strike.* 1. The Committee had requested the Government to restrict the list of essential services in which the right to strike may be prohibited. The Committee notes with satisfaction that Schedule 7 of the Act defines essential services in line with the Convention.

2. In its previous comments, the Committee had requested the Government to amend the provisions which gave the authorities permanent powers of supervision over trade union ballots, including in case of strikes, in a way which constituted interference in trade union activities, and to indicate in this framework whether the enactment of the ERA would lead to the replacement and repeal not only of clause 13 of the Schedule to section 37 of the Trade Unions Act but also section 10(1) and 10(A)(a) of the Trade Unions Regulations. The Committee notes with interest that, in addition to section 265 of the ERA, which repeals the Trade Unions Act, section 265(7) provides that any subsidiary legislation like the Trade Unions Regulations continues only to the extent that it is consistent with the Act. *The Committee requests the Government to confirm that section 10(1) and 10(A)(a) of the Trade Unions Regulations are no longer applicable.*

The Committee notes that several discrepancies remain between the provisions of the ERA and the Convention. These are raised in a request addressed directly to the Government.

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

The Committee notes the Government's report as well as its reply to the comments by the International Trade Union Confederation (ITUC). *It also notes the latest comments by the ITUC dated 27 August 2007 with regard to violations of the Convention in 2006 and requests the Government to send its observations on this issue.*

The Committee notes the text of the Employment Relations Act No. 36 of 2007 (ERA) which came into effect on 1 October 2007 and repealed the Trade Unions Act, the Trade Disputes Act, the Trade Unions (Recognition) Act, the Wages Councils Act and the Employment Act (section 265 of the Employment Relations Act).

*Article 1 of the Convention. Protection against anti-union discrimination.* The Committee recalls that its previous comments concerned the need to ensure adequate protection against anti-union discrimination in the new legislation. The Committee notes that according to the ITUC, to date, not a single employer has been prosecuted despite numerous cases reported to the Ministry each year about victimization of workers who show any inclination to join a union; moreover, the courts have usually taken the position that reinstatement is not the remedy when employers interfere in union activities. The Committee notes with satisfaction from the Government's reply and the text of the ERA, that section 77 contains a comprehensive prohibition of acts of anti-union discrimination for all types of trade union activity, at all stages of the employment relationship, including recruitment. Part 13 provides for a redress system to address unfair dismissals. Part 20 allows trade unions to raise grievances through mediation services, the Employment Relations Tribunal and the Employment Relations Court. The Tribunal and Court have under section 230 the power to order remedies including reinstatement, reimbursement and/or compensation for humiliation, loss of benefit or loss of property.

*Article 2. Protection against acts of interference.* The Committee's previous comments concerned the need to introduce adequate protection, including sufficiently rapid machinery and dissuasive sanctions, against acts of interference by employers or their organizations into workers' organizations and vice versa. The Committee notes with satisfaction that protection is envisaged in section 125(1)(f) of the ERA as well as section 4 (definition of "duress" and "employment grievance") in conjunction with Part 20 of the ERA on the redress machinery which may be triggered in case of trade union grievances relative to acts of interference.

*Article 4. Promotion of collective bargaining.* 1. The Committee notes that the ITUC refers to: difficulties faced by minority unions in obtaining recognition for collective bargaining purposes, as such recognition is mandatory only for unions with absolute majority in the unit; and difficulties in concluding collective agreements in EPZs. The Committee notes with satisfaction that according to the Government, the ERA removed the absolute majority requirement for recognition so as to establish a duty to negotiate regardless of whether the union represents the absolute majority of workers in the unit, including in EPZs.

2. The Committee notes that the ITUC referred to a case of denial of access to a workplace by trade union representatives. The Committee notes with satisfaction that section 145 of the ERA (2007) now provides access to workplaces to trade union representatives with the consent of the employer which shall not be withheld unreasonably, in order to discuss union business with members, recruit members or provide information on the union and union membership to any worker on the premises.

*Articles 1 and 4. With regard to its previous comments on the dispute in the Vatukoula Mining Company (refusal to recognize a union and dismissal of striking workers 15 years ago), the Committee, noting that the Government has not provided any information in this regard, once again requests the Government to give consideration to the recommendation of the Senate Select Committee for assistance to help the remaining workers re-establish themselves.*

The Committee addresses a request on another point directly to the Government.

## **France**

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

The Committee notes that the Government's report has not been received. It notes that, in a communication of 31 August 2007, the Confédération générale du travail–Force ouvrière (CGT–FO) indicates that the Act respecting social dialogue and continuity of the public service in scheduled land passenger transport of 21 August 2007 (Act No. 2007-1224) is not in conformity with the Convention.

The Committee notes that, by virtue of section 5 of this Act, transport enterprises, the employer and the representative trade unions shall engage in bargaining with a view to the conclusion, before 1 January 2008, of a collective agreement on the service to be envisaged in the event of the disturbance of traffic or a strike. This provision also establishes that, in the absence of an applicable agreement as of 1 January 2008, a plan of the envisaged services shall be determined by the employer. In this respect, the Committee recalls that the determination of a negotiated minimum service should be limited to the operations that are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, as it restricts one of the essential means of pressure available to workers to defend their economic and social interests. The Committee emphasizes that workers' organizations should be able, if they so wish, to

participate in defining the minimum service, along with employers and the public authorities. The Committee also recalls that, in the event of disagreement, the parties might also envisage the establishment of a joint or independent body (or recourse to a judicial body by the mutual consent of parties) 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 requests the Government to take the necessary measures to amend section 5 of Act No. 2007-1224 taking into account the principles relating to the determination of a negotiated minimum service referred to above as well as to provide for a reasonable period of time for the negotiation of a minimum service.*

*The Committee requests the Government to transmit its replies to the observations of the CGT-FO.*

The Committee is addressing a request on other issues directly to the Government.

## Gabon

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

The Committee notes the Government's report. In its previous observation, the Committee noted the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) which referred largely to legislative issues already addressed by the Committee and restrictions on trade union rights, particularly acts of violence by the police against trade unionists. In its reply, the Government states that, in the cases of strike action referred to by the ICFTU where security forces were obliged to intervene (forestry sector, Ministry of Foreign Affairs), the dispute has been brought to an end through conciliation. The Committee recalls that strikes are one of the essential means available to workers and their organizations for the promotion and defence of their economic and social interests and trusts that in the future the Government will ensure that recourse to law enforcement only occurs in situations of a serious nature in which public order is seriously threatened.

The Committee notes the comments of the ITUC of 28 August 2007 which refer to the arrest and arbitrary imprisonment of representatives of the Free Trade Union Confederation of Gabon (CGSL) over recent years. The Committee also notes the communication from the Trade Union Congress of Gabon (CSG) dated 25 September 2007, which states that the problematic issue of trade union representation has been the object of intensive ILO technical assistance to Gabon, but that at present the Government refuses to address the issue. The CSG states that the designation of the most representative organizations is carried out in violation of the Convention and requests that professional elections be held. *The Committee asks the Government to reply to the comments made by the ITUC and the CSG in its next report.*

## Gambia

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

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

The Committee notes the comments submitted by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in a communication dated 10 August 2006 concerning issues already raised.

*Scope of the Convention.* The Committee notes that Labour Act No. 12 of 1990 (the Act) does not apply to workers engaged in civil service, prison service and domestic service. The Committee notes that according to the Government the new labour bill empowers the Secretary of State to extend the scope of the bill to cover any category of worker excluded. *While recalling 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 guarantee that the rights afforded by the Convention are ensured for the abovementioned categories of worker.*

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* The Committee had noted that section 75 of the Act provides that any term or condition in a contract of employment, whether express or implied, prohibiting an employee from becoming or remaining a member of any trade union, or purporting to subject the employee to any penalty, loss of benefit or detriment by reason of such membership, shall be null and void. However, according to section 73(1), not all workers are entitled to a written contract of employment, this type of contract being reserved to specific cases of employment, in particular, fixed-term employment of six months or more. *The Committee requests the Government to indicate the way in which workers are guaranteed protection against acts of anti-union discrimination in cases where the employment relationship is not based on a written contract of employment.*

The Committee had noted that Part IX, sections 109–125 of the Bill by which the Act was introduced to Parliament contained provisions on protection against dismissal by reason of union membership or because of participation in trade union activities, including strikes, and provided for compensation and reinstatement as remedies for such acts. However, the corresponding provisions are missing from the copy of the Labour Act adopted by Parliament, which the Committee has at its disposal. *The Committee therefore requests the Government to transmit a complete copy of the Act.*

*Article 2. Protection against acts of interference.* The Committee had noted that there is no provision in the Act concerning protection against acts of interference by workers' and employers' organizations (or their agents) in each other's affairs. The Committee notes that according to the Government the new labour bill provides protection against acts of

interference. *The Committee requests the Government to communicate the text of any provisions of the new labour bill that prohibit acts of interference (such as the establishment or financial support of workers' organizations with the object of placing them under the control of employers or employers' organizations) and guarantee sufficiently rapid appeal procedures and dissuasive sanctions against such acts.*

*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 had observed that section 161 of the Act provides that voluntary agreements may be registered by the Commissioner upon the application of both parties to the agreement. Noting that the wording of this section seems to allow discretionary power to deny registration, the Committee recalls that the registration of the collective agreement can be refused only if it has a procedural flaw or does not conform to the minimum standards laid down by general labour law. The Committee notes that according to the Government the new labour bill does not give discretionary power to the Commissioner. *It requests the Government to transmit a copy of the relevant provisions.*

The Committee had noted that, according to section 168, in order to be recognized as a sole bargaining agent, a trade union must be registered as "efficient", within the meaning of sections 128(5) and 142 of the Act (i.e. the Registrar should be satisfied that the trade union is and is likely to remain independent and is capable of efficiently representing its members and conducting the trade union affairs). *Considering that provisions which allow such great discretionary power to the Registrar are contrary to the principle of the autonomy of the parties in collective bargaining and therefore are not in conformity with the Convention, the Committee requests the Government to repeal or amend sections 128(5), 142 and 168, accordingly.*

The Committee also noted that according to section 168, 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 be granted to all the unions in the unit, at least on behalf of their own members and requests the Government to take the necessary measures in order to bring the legislation into conformity with the Convention.*

The Committee further noted that section 168(6) provides that an employer may, if he or she wishes, organize a secret ballot upon receiving an application 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. *While taking note of the Government's statement according to which the appropriate authorities will be informed of the Committee's comments in order to make the necessary changes, the Committee requests the Government to amend section 168(6) in accordance with the above.*

The Committee had noted that under section 167, a work committee could be set up at an establishment where at least 100 employees are employed. The Committee notes that the Government has communicated the text of the relevant provisions of the new labour bill. *The Committee requests the Government to clarify the role of such committees and more specifically to indicate: (1) whether trade union representatives can be elected to such committees; and (2) whether these committees can negotiate and conclude collective agreements even when a union exists in the undertaking.*

*Article 6.* The Committee had requested the Government to indicate whether public servants not engaged in the administration of the State are granted collective bargaining rights and to specify the relevant legislative provisions. The Committee notes that according to the ICFTU, these categories of worker do not have the right to form unions and therefore do not have the right to collective bargaining. *The Committee notes that according to the Government the relevant authorities will be advised to grant the right to collective bargaining to civil servants in the new labour bill.*

*The Committee trusts that the Government will take all necessary steps to bring its national law into conformity with the Convention and requests the Government to keep it informed of any measures taken or envisaged in this respect, in particular those concerning the adoption of the new labour bill.*

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

## Georgia

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

The Committee notes the Government's report as well as its reply to the 2005 and 2006 comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation).

It further notes the comments of the ITUC and of the Georgian Trade Union Confederation (GTUC) dated 28 and 31 August 2007, respectively, referring to the issues previously raised by the ICFTU and the Committee.

*Labour Code (2006).* The Committee had previously noted the adoption in 2006 of the new Labour Code. In this respect, the Committee had noted that while the new Labour Code repealed the Law on collective contracts and agreements and the Law on collective labour disputes, it did not regulate all aspects of freedom of association and that it appeared that by repealing the abovementioned legislation, there were numerous aspects of freedom of association that would not be sufficiently protected in law. The Committee had asked the Government to indicate whether it intended to adopt additional legislation to this end. The Committee notes the Government's indication that Chapter X of the Labour Code regulates the matters in connection with collective agreements and Chapter XII – labour disputes. It further notes the Government's statement that the Constitution and the Law on trade unions provide for protection of trade union rights. The Committee also notes the Government's indication that the Ministry of Labour, Health and Social Affairs has prepared draft amendments to the Labour Code so as to bring it into closer conformity with international labour standards. The draft amendments shall be submitted to Parliament pursuant to the procedure provided for in the national legislation. *The Committee requests the Government to keep it informed of 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 (associations) and that the legislation does not provide for a minimum membership requirement for establishing a trade union, while 15 members are required to establish a primary trade union. While noting the Government's statement, the Committee notes that section 2(9) of the Law on trade unions refers expressly to "trade union" and not to "confederation of trade unions", while section 3(9) refers to the "primary trade union" and to the minimum requirement of 15 members. ***The Committee therefore once again requests the Government to take the necessary measures to amend section 2(9) so as to lower the minimum trade union membership requirement and to ensure that the right to organize is effectively guaranteed. It requests the Government to keep it informed of the measures taken or envisaged in this respect.***

Furthermore, the Committee had asked the Government to indicate whether federations of trade unions may call a strike action in defence of their members' interests. The Committee notes the Government's indication that the legislation does not limit the right to strike of trade union confederations (associations).

Finally, the Committee recalls that it had previously noted the ICFTU's comments with regard to the dispute over trade union property and urged the Government to engage in consultations with trade union organizations in order to settle the question of the assignment of property. The Committee notes the Government's statement that the property dispute, previously referred to by the ICFTU, had been resolved.

With regard to the specific provisions of the Labour Code, the Committee is addressing a request directly to the Government.

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

The Committee notes the Government's report. It further notes the comments of the International Trade Union Confederation (ITUC) and of the Georgian Trade Union Confederation (GTUC) which refer to the adoption of the Labour Code without prior consultation with trade unions and insufficient protection against acts of anti-union discrimination and interference, and insufficient regulation of collective bargaining matters.

The Committee notes the Government's statement that representatives of trade unions and employers' organizations were involved in the discussion of the Labour Code.

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. Acts covered.* The Committee had noted that section 11(6) of the Law on trade unions and section 2(3) of the new Labour Code prohibited, in very general terms, anti-union discrimination, and did not appear to constitute sufficient protection against anti-union discrimination: (i) at the time of recruitment of workers; and (ii) at the time of termination of their employment.

- (i) *Recruitment.* The Committee had noted that, pursuant to section 5(8) of the Labour Code, the employer was not required to substantiate his/her decision for not recruiting the applicant. Considering 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 requested the Government to amend section 5(8) of the Code. The Committee welcomes the Government's indication that discussions are taking place on reformulating this provision. ***The Committee expects that this provision will be soon amended so as to provide adequate protection against anti-union discrimination at the time of hiring.***
- (ii) *Termination of employment.* The Committee had 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 his/her employee provided that the employee was given one month's pay, unless otherwise envisaged by the contract. While the Government refers to the general prohibition of anti-union discrimination provided for in section 11(6) of the Law on trade unions, in light of the absence of explicit provisions banning dismissals by reason of union membership or participating in union activities, as noted above, the Committee considers that the legislation is unclear as to the regulation of cases of anti-union dismissals and does not offer sufficient protection against anti-union dismissals as called for by *Articles 1 and 3* of the Convention. ***The Committee requests the Government to amend its legislation so as to ensure that there is a specific prohibition of anti-union dismissals. The Committee requests the Government to keep it informed of the measures taken or envisaged in this respect.***

*Means of redress and sanctions.* With regard to the Committee's previous request to provide for sufficiently dissuasive sanctions in cases of anti-union discrimination, 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. ***The Committee requests the Government to indicate the relevant provisions regulating the procedure under the Code of Administrative Violations, its duration and the possibilities of means of redress available to workers, victims of acts of anti-union discrimination, including dismissals, transfers, downgrading, etc. (particularly, considering the GCTU's allegation of absence of procedures of redress in the national legislation).*** The Committee further notes that the Government indicates that, according to section 142 of the Criminal Code, "violations of the equality

based on membership of any public association” is punishable by imprisonment for a period of up to two years. The Committee observes, however, that the Criminal Code (1999) at its disposal does not refer to discrimination based on membership of an association. ***It requests the Government to provide clarifications in this respect.***

***Article 2. Protection of workers’ organizations against acts of interference by employers.*** The Committee had previously noted that Georgian legislation prohibited acts of interference from employers in trade union activities. However, no express provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference, existed in legislation. ***The Committee once again requests the Government to take the necessary measures in order to adopt specific legislative provisions in this respect.***

***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 had further noted Chapter XII of the Code (sections 41–43), which concerns collective labour relations. Under section 41(1), “a collective contract shall be concluded between an employer and two or more employees”. According to section 42(1) and (3), for the purposes of concluding, changing or terminating a collective contract, or for the purpose of protecting the employees’ rights, the unions of employees act through their representatives, defined as any physical person. Furthermore, in accordance with section 43(2), an employee may conclude individual and/or several collective contracts with one employer. Pursuant to subsections (4) and (5) of the same section, if one of the parts of the contract is annulled on the initiative of either party, this could cause the termination of labour relations pursuant to the Labour Code; and the existence of collective contracts does not limit the right of the employee or the employer to terminate the contract. The Committee considers that sections 13 and 41–43 read together are in contradiction with the notion of collective agreements in the sense of Convention No. 98, i.e. agreements regulating terms and conditions of employment negotiated between employers or their organizations and workers’ organizations; moreover, the legislation seems to put in the same position collective agreements concluded with trade union organizations and agreements between an employer and non-unionized workers (sections 41–43). Furthermore, the Committee considers that with the Law on trade unions containing one general provision on the right of trade unions to collective bargaining, and the Law on collective contracts and agreements repealed, it is clear that collective bargaining is not sufficiently regulated (section 41 even stipulates that collective agreements follow the same principles as individual agreements). The Committee notes that the Government recognizes the need to improve the legislation, as Georgia does not have a collective agreement tradition and there are not too many collective agreements concluded in practice. ***Considering that the provisions of the new Labour Code do not promote collective bargaining as called for by Article 4 of the Convention, the Committee requests the Government to take the necessary measures, either by amending the Labour Code or by adopting specific legislation on collective bargaining, so as to promote collective bargaining and to ensure the regulation by legislative means of the right of employers’ and workers’ organizations to bargain collectively in full conformity with Article 4 of the Convention. The Committee requests the Government to keep it informed of the measures taken or envisaged in this respect.***

The Committee notes the Government’s indication that the Ministry of Labour, Health and Social Affairs has prepared draft amendments to the Labour Code so as to bring it into closer conformity with international labour standards; the draft amendments shall be submitted to the Parliament pursuant to the procedure provided for in the national legislation. ***The Committee hopes that all legislative modifications requested above will be reflected in the draft amendments to the Labour Code and requests the Government to keep it informed of the developments in this regard. The Committee recalls that the technical assistance of the Office is at its disposal.***

## Germany

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

The Committee takes note of the Government’s report and its reply to the 2006 comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation). The Committee further notes the comments submitted by the ITUC of 28 August 2007 concerning issues already raised by the Committee.

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 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 that: (1) the draft legislation concerning public servants was dropped following the change in Government: (2) Convention No. 87, by virtue of its very origin, does not have any

bearing on the prohibition of strike action by civil servants and strike action for civil service is subject to a general prohibition under the terms of constitutional law: (3) the legal status of civil servants must, under constitutional law, be the same for all and there can be no distinction in respect of the ban of strike according to the functions of individual categories of civil servants and there is no differentiation by functional category with regard to the extent to which they are bound by their obligations. (4) Civil servants have no particular right to carry out a particular task or to continue to carry out what they regard as their particular function and it is for their superiors to decide where to deploy them, and to transfer them within a department as required. (5) The mobility required by the public administration would be significantly impaired if the legal status of civil servants differed according to their particular functions. (6) The call to accord some civil servants the right to strike, depending on their particular functions, is therefore not consonant with the fundamental principles of the German civil service and would be detrimental to the effective and responsible discharge of the administration's duties in the general public interest.

The Committee 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 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 Government's report and its observations on the comments of the International Trade Union Confederation (ITUC).

The Committee's previous comments concerned the procedures through which the conditions of employment of civil servants, including teachers, are determined. The Committee had noted in 2005 that a major reform of the civil service was under way and that consultations and dialogue with public servants' trade unions had been an important element in the context of the preparation of draft legislation on the public service. It further notes from the Government's reply of 2006 to the comments of the ITUC that the conditions of employment of civil servants, including teachers, are, according to constitutional law principles, laid down in national laws and that, consequently, there is no provision for collective bargaining, even for individual categories of civil servants. The Government underlines that section 94 of the Federal Public Service Act (Bundesbeamtengesetz) and the relevant Länder legislation provides for the participation of public servants' unions in drawing up the regulations applicable to civil servants which constitute more than mere consultation but less than binding co-determination. The Government stresses that teachers are subject to the jurisdiction of the individual Länder administrations and that the latter decide whether to hire teaching staff as civil servants or as normal employees who have the right to collective bargaining. The Committee also notes from the Government's latest report that the draft legislation on comprehensive modernization of the law concerning public servants was dropped following the change in Government.

The Committee 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 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. The Committee expresses the hope that the positive experience recently acquired through close consultation and dialogue with the public servants' trade unions will provide further opportunities to ensure that teachers can engage in formal negotiations and fully exercise the right to collective bargaining.

*In the light of the above comments, the Committee once again requests the Government to indicate in its next report 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**

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

The Committee notes the Government's report and the comments submitted by the International Trade Union Confederation (ITUC) on 28 August 2007. The ITUC's comments mainly refer to matters previously raised by the Committee.

The Committee had previously taken note of the comments submitted by the International Confederation of Free Trade Unions (ICFTU, now ITUC) in 2006, which concerned allegations of the police firing shots and tear gas to disperse protesting miners and the dismissal of 17 workers, including five union executives, following a strike. In respect of the police shootings, the Committee notes the Government's statement that the workers concerned, who were employed on short-term contracts, were denied severance awards by their employer following the expiry of their contracts. They then commenced a demonstration and blocked the road leading to the employer's worksite, following which the police intervened to control the situation. The Government adds that no workers were injured, and that the workers concerned subsequently reached a settlement with their former employer in July 2003; a copy of the settlement, which was approved by the High Court of Justice, is attached to the Government's report.

As regards the alleged dismissals following a strike, the Committee notes the Government's indication that, following deadlocked contract negotiations, the union and enterprise concerned had resorted to the mediation procedure to resolve the dispute over salaries and remuneration. When mediation failed to resolve the dispute over salaries, the parties chose to submit the matter to arbitration, which in turn resulted in an arbitration award. The Government adds that the union local rejected the terms of the arbitration award, despite pleas from the National Labour Union Commission and the National Union, and embarked on an illegal strike on 17 October 2005. The employer then lawfully dismissed the workers in accordance with section 168(4) of the Labour Act, 2003 (Act 651). A tripartite investigation board was subsequently established to investigate the illegal strike, and following a request from the National Union the local union secretary was reinstated. The Committee takes due note of the above information.

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 that the Government's report has not been received. It further notes the comments submitted by the International Trade Union Confederation (ITUC).

The Committee had previously taken note of the comments submitted by the ITUC in 2006, which referred to acts of anti-union discrimination in many companies. The Committee notes the Government's statement, in its reply to the ITUC's 2006 comments, that it has received no reports of complaints of anti-union discrimination and that the legislation provides adequate protection, including sanctions, against such acts.

*Prison staff.* The Committee notes the Government's indication in the Convention No. 87 report that while no legal provisions set forth the right to organize of prison staff, prison service staff have formed an association to protect and promote their interests. ***In these circumstances, the Committee requests the Government to amend the Labour Act so as to ensure that prison service staff expressly enjoy the right to organize and to collective bargaining.***

*Collective bargaining certification.* Finally, the Committee had previously noted that sections 99–100 of the Labour Act, 2004, 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 (section 99). The Chief Labour Officer shall, subject to regulations made by the minister, determine which union shall hold a collective bargaining certificate in a situation where there is more than one trade union at the workplace (section 99(4)), and may issue an amending certificate after consultation with the trade union named in the certificate and the appropriate employers' organization (section 100).

It seems to the Committee that the Chief Labour Officer has full discretion to decide whether to grant recognition to a trade union and that the criteria upon which this decision should be based are not specified. The Committee considers that in cases in which a system of "compulsory" recognition has been established, where the employer must recognize the existing trade union(s) under certain conditions, it is important for the determination of the trade union in question to be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse. Furthermore, 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 General Survey of 1994 on freedom of association and collective bargaining, paragraph 240). ***Noting also that the comments submitted by the ITUC refer to the refusal to grant trade union recognition in two enterprises, the Committee requests the Government to provide information on any regulations adopted or envisaged under section 99 of the Labour Act with a view to setting up procedures and criteria relevant to the Chief Labour Officer's competence to determine which union shall hold a collective bargaining certificate.***

## Guatemala

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

The Committee notes the Government's report and its reply to the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation), of 31 August 2005, and the Trade Union Confederation of Guatemala (UNSITRAGUA) of 26 August 2006. The Committee also notes the comments made by the ITUC, dated 28 August 2007, which refer to legislative matters and issues relating to the application of the Convention in practice which have already been raised by the Committee and, particularly, threats and harassment against a trade union leader, the attempted murder of a leader of the teaching sector and the kidnapping for two hours of a trade union leader. ***The Committee requests the Government to provide its comments in this respect.***

The Committee also notes the comments made by the Guatemalan Trade Union Movement, which groups together many trade union organizations (CTC, CGTG, CUSG, CNOC, CNSP, FENASTEG, FESEBS, FESTRAS, FESOC, FNL, SITRADOCSA, SITRADEORSA, SITRAPDEORSA and UNSITRAGUA), dated 27 August 2007. The Committee further notes the various cases that are being examined by the Committee on Freedom of Association, some of which relate to serious allegations concerning the murder of a trade union leader. The Committee also notes the conclusions of the technical assistance mission which visited the country from 26 to 28 February 2007.

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

The Committee recalls that in previous observations it noted acts of violence against trade unionists and requested the Government to provide information on developments in this respect. The Committee notes that the Government provides information supplied by the Office of the Special Investigator into crimes against journalists and trade unionists of the Office of the Public Prosecutor concerning complaints relating to acts of violence against trade unionists. In accordance with this information, seven complaints were made in 2007, compared with 37 in 2006 and 43 in 2005. In addition, two rulings have been handed down, one in 2004 and another in 2006, with one person convicted in each case. There have also been cases of settlements through conciliation and 13 cases prepared and awaiting examination by the courts. In this respect, the Committee notes the conclusions of the technical assistance mission which emphasized the existence of situations of anti-union violence against trade unionists, including death threats, acts of intimidation and even the murder of a trade union leader in 2007. According to the information received by the mission, 17 trade unionists are benefiting from official security measures. In this respect, the mission welcomed the fact that, at its request, the Government provided protection measures for the Secretary-General of the Union of Workers of the Quetzal Port Enterprise, and the headquarters of the union. The Committee notes that the Office of the Public Prosecutor provided information to the mission on the situation with regard to complaints and criminal proceedings relating to crimes against trade unionists. The Committee notes that, in its conclusions, the mission indicated that the complaints made only lead in very few cases to the identification and punishment of those responsible. In this respect, while noting certain protection measures for trade unionists, the Committee once again expresses deep concern at the acts of violence against trade union leaders and members, and in particular deeply regrets the murder of a trade union leader in 2007. It 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 take the necessary 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 asks the Government to take the necessary measures without delay to conduct the investigations with a view to identifying those responsible for acts of violence, prosecuting and penalizing them in accordance with the law. The Committee requests the Government to keep it informed of any development in this respect.***

#### **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), delays in the registration of trade unions or refusal to register them. In this respect, the Committee notes the indication by the technical assistance mission in its conclusions that “the legislation in force raises obstacles to the adequate development of trade unionism, starting with the impossibility in practice to establish industry unions, in view of the requirement in law for such organizations only to be accepted when their founders demonstrate that they represent 50 per cent plus one of the workers in the sector, which is clearly impossible to achieve”. The mission also referred to the lack of detailed statistics on trade unions and higher-level organizations;
- restrictions on the right to elect trade union leaders in full freedom (the need to be of Guatemalan origin and to be a worker in the enterprise or economic activity in order to be elected a trade union leader, under sections 220 and 223 of the Labour Code);
- restrictions on the free financial administration of trade union organizations under the Basic Act on supervision by the tax administration, which in particular allows inspections without prior notice. In this respect, the Committee

notes that the technical assistance mission indicated in its conclusions that over the past eight years only one inspection of trade union accounts has been carried out and that financial investigations are exclusively based on disparities detected through information technology;

- restrictions on the right of workers' organizations to organize their activities freely (under section 241 of the Labour Code, strikes are declared not by a 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 servants or workers in specified enterprises (sections 390(2) and 430 of the Penal Code and Decree No. 71-86). The Committee notes the emphasis placed by the technical assistance mission on the fact that there have not been any legal strikes since the 1970s. Indeed, according to the mission, "the problem lies in the excessive judicial basis of labour relations law, which in other countries is a matter for the labour administration and not the judiciary. Rulings by judges tend to hold sway when collective solutions are being sought and there is an absence of typical trade union action. It noted accordingly that the last lawful strike was held in 1975 and that for over ten years there has not been any type of strike".

With reference to these matters, the Committee notes the Government's indication that the technical assistance mission was extremely useful. The Government reports that following the mission tripartite meetings were held in the Tripartite Legal Reform Subcommittee, the pending issues were reviewed and a priority was established among the issues. A number of meetings have been held and the proposals made by the Committee have been reviewed, some of which had already achieved consensus in 2001. These issues include the amendment of section 390 of the Penal Code. The Government requests continued technical assistance in this respect.

In general terms, the Committee notes that the technical assistance mission also found that "the basis of the Guatemalan problem in the field of freedom of association and collective bargaining lies in the existence of a labour law system which, in both substantive and procedural terms, prevents and raises obstacles to the appropriate development of trade union activity and accordingly to collective bargaining and, as indicated by the ILO supervisory bodies, is in objective violation of Conventions Nos 87 and 98. Without the reform of the system, it is very difficult to propose an appropriate solution, particularly since both the social partners and the Government are imbued with a culture that follows very closely procedures arising out of this legal system". The Committee observes with concern that the serious problems on which it has been commenting for many years continue to persist and that, despite the tripartite discussion at the national level and the technical assistance provided on various occasions, there has not been significant progress. The Committee considers that a reform of existing legislation is needed in order for the guarantees expressed in the Convention. ***The Committee strongly hopes that the new Government, with the assistance of the mission which will be held at the end of April in 2008, will show the political will to resolve these issues. The Committee requests the Government to provide information in its next report on any positive developments in relation to the various issues raised.***

### Other matters

***Export processing sector.*** The Committee previously requested the Government to provide information on any complaints relating to violations of trade union rights in the export processing sector over the past two years, and on their outcome. In this respect, the Committee notes that the Government attaches information provided by the General Directorate of Labour according to which there are seven active trade union organizations. The Government also forwards information supplied by the general labour inspectorate relating to complaints of violations of Conventions Nos 87 and 98 between July 2006 and June 2007, of which one in 2006 related to the export processing sector. In 2007, there have not been complaints relating to the export processing sector. The Government indicates that since the establishment of the Export Processing Inspection Unit in 2003, the latter is responsible for addressing all types of complaints and labour disputes in the sector. Two workshops have been held and it is coordinating with the CGTG the organization of workshops addressing the subject of trade union rights. The Committee notes the Government's indication that technical and financial assistance has been requested from the ILO Subregional Office in San José in Costa Rica to hold monthly tripartite seminars on freedom of association and collective bargaining in the export processing industry. The Committee welcomes this initiative and hopes that the necessary technical assistance will be provided. ***In this regard, noting that in their latest communication the trade union organizations refer to significant problems relating to trade union rights, the Committee requests the Government to take the necessary measures to give full effect to the Convention in export processing zones and to continue providing information in this respect.***

***Civil Service Bill.*** In its previous observation, the Committee noted a Civil Service Bill which, according to the UNSITRAGUA and the National State Union Workers' Federation (FENASTEG), requires a percentage that is too high to establish unions and restricts the right to strike. The Committee requested the Government to keep it informed of legislative developments in this respect. In this connection, the Committee notes the Government's indication that the legislative initiative proposing amendments to the Civil Service Act was the subject of broad consultation and has received one favourable and another unfavourable opinion in the various commissions of the Congress of the Republic. The Government indicates that it requested technical assistance from the Office to assess and make the necessary

recommendations and proposals on the compatibility of this legislative initiative with Conventions Nos 87 and 98. ***The Committee expresses the firm hope that, with the contribution of the requested technical assistance, the Civil Service Bill will be in full conformity with the provisions of the Convention. It requests the Government to keep it informed on this subject.***

*Situation of many workers in the public sector who do not benefit from trade union rights.* The Committee notes that, according to the technical assistance mission, there are a high number of workers classified as temporary, daily or occasional and that these classifications are not set out in the law, but in the General State Budget, as indicated in the Manual of Budget Classifications for the public sector in Guatemala. These workers (they are under contracts under item 029 and others of the budget), who should have been recruited for specific or temporary tasks, are engaged in ordinary and permanent functions and often do not benefit from trade union rights and other employment benefits apart from wages, and are not covered by the social security nor by collective bargaining where it exists. In this connection, the Committee recalls that, in accordance with *Article 2 of the Convention*, all workers, without distinction whatsoever, with the sole possible exception of the armed forces and the police, shall have the right to establish and to join organizations of their own choosing. ***In this respect, the Committee requests the Government to take the necessary measures to ensure that all workers in the public sector, including those engaged under item 029 of the general state budget, benefit from the rights and guarantees set out in the Convention. The Committee requests the Government to keep it informed on this subject.***

*Tripartite National Committee.* Finally, the Committee previously requested the Government to examine in the Tripartite National Committee the issues raised by UNSITRAGUA in 2005. In this regard, the Committee notes the Government's indication that, due to the new composition of the Tripartite Committee on International Labour Affairs and the failure to appoint one of its members, it has not been possible to make progress in the work assigned to the tripartite subcommittees and councils. The pending issues raised by UNSITRAGUA will be examined in the context of the Legal Reform Subcommittee, which has just started to meet again; the pending agenda will be reviewed and it has been agreed on a tripartite basis that this issue will be re-examined by the Tripartite Committee on International Labour Affairs. The Government is awaiting the communication from UNSITRAGUA to update the list of pending cases. It is also hoped to address the cases raised by UNSITRAGUA, in relation to which the Committee on Freedom of Association has recommended that investigations be undertaken, in the context of the Tripartite Committee. In this connection, the Committee notes that, according to the technical assistance mission, the Tripartite Committee requires technical assistance to improve its operation. The mission noted that the Tripartite Committee plays a valuable role in social dialogue and in slowing down undesirable legislative initiatives and draft texts, as well as in examining and resolving collective disputes, but that it does not succeed in putting forward joint proposals in relation to most of the pending problems. The Committee also notes the appreciation expressed by the mission that the Government (and the Labour Commission of the Congress) have requested additional technical assistance from the ILO to overcome the pending problems. ***The Committee requests the Government to continue keeping it informed of the work of the Tripartite Committee on International Labour Affairs, as well as that of the Legal Reform Subcommittee and the mechanism for rapid intervention in cases. The Committee invites the Government to take the necessary measures in order to ensure that the issues raised by the Guatemalan Trade Union Movement in its communication of 27 August 2007 are also examined by the Tripartite Committee.***

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

The Committee notes the Government's report, the discussion in the Committee on the Application of Standards in June 2007 and the cases under examination by the Committee on Freedom of Association.

The Committee also notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC) on 12 July 2007, which mainly refer to matters that are already under examination by the Committee, as well as those covered in the cases under examination by the Committee on Freedom of Association.

The Committee also notes the conclusions of the technical assistance mission which visited the country from 26 to 28 February 2007 and the Government's acceptance of a new mission at the end of April 2008.

The Committee recalls that for various years it has been raising the following problems relating to restrictions on the exercise of trade union rights in practice.

*Failure to comply with orders to reinstate dismissed trade unionists.* The Committee notes the Government's indication that, together with magistrates from the Supreme Court of Justice, the Ministry of Labour and Social Insurance has initiated an investigation into all the complaints of failure to comply with orders to reinstate dismissed trade unionists, with particular reference to the cases that are before the Committee on Freedom of Association. In this respect, the Government indicates that in cases in which reinstatement has not been carried out, this is recorded and the employers are prosecuted for failure to comply with court orders. In the case of mayors or ministers who have not complied with court orders, it is necessary to wait until the preliminary procedures are initiated before proceeding with the prosecution. According to the Government, certain cases are before the courts on appeals or recourse for the protection of constitutional rights (*amparo*). ***The Committee requests the Government to indicate whether, as a result of these proceedings and court cases, compliance is achieved with reinstatement orders.***

*Slowness of the procedure to impose penalties for breaches of labour legislation.* In this regard, the Committee notes the Government's indication that meetings have been held with magistrates of the Supreme Court of Justice with a view to exchanging impressions and information, with a view to making tangible proposals to seek improvements in the application of labour law through the orders issued by labour courts. In this respect, the Government indicates that greater flexibility has been achieved in the penalties applied by the labour courts for labour-related offences and the respective fines have been imposed. Studies and analyses have been carried out according to the tripartite proposal for the recruitment of an official exclusively assigned to monitoring the implementation of sentences for labour and social security offences. The tripartite proposal to carry out training for labour judges with a view to unifying the criteria applied will be studied and analysed. It is also intended to carry out activities in the context of the project for the strengthening of labour courts in Central America and the Dominican Republic, which is currently being implemented by the ILO Subregional Office and is financed by the Government of the United States.

The Committee also notes that in its conclusions the technical assistance mission considered that court procedures are slow in view of the low number of courts and the possibility for those found guilty, following the ruling of the court of second instance, to challenge the ruling through a procedure for the protection of constitutional rights (*amparo*). This procedure impedes prompt action by the courts and means in practice that a new body becomes involved, thereby doubling the time required for the proceedings. It adds that the roots of the problem lie in the excessive reliance on the courts to assert collective labour rights. There is a tendency to defer to the courts when seeking collective solutions, and an absence of typical trade union action.

*Need to promote trade union rights (and particularly collective bargaining), especially in export processing zones.* The Committee notes the Government's indication that two tripartite seminars were undertaken on freedom of association and collective bargaining in the export processing sector, in accordance with the recommendations of the Committee. The Government adds that due to the high level of demand and the need to promote trade unionism and collective bargaining in this sector, and with a view to continuing this work, technical and financial assistance has been requested with a view to holding a monthly tripartite seminar on freedom of association and collective bargaining in the export processing industry. The Government adds that, in the context of a draft national policy of free advice for workers wishing to organize, 15,000 information leaflets have been issued. Furthermore, there is a free legal advice service for workers wishing to organize, including the regular dissemination of labour and social security laws. Labour inspectors are continually holding training seminars. The Government adds that the dispute prevention body in the export processing zone has carried out two seminars covering the subjects of labour law and "complaint procedures". Workshops are also being organized on the subject of freedom of association.

The Committee further notes that the technical assistance mission indicated that it received contradictory information on the situation with regard to collective bargaining in export processing zones, where there are only two collective agreements in force, although it is not known how many workers they cover. There are now no more than three trade unions existing in export processing zones. ***The Committee requests the Government to continue promoting trade union rights in export processing zones and to provide information on this subject, particularly taking into account the reference in their latest communication by the national trade union organizations to substantial problems relating to trade union rights.***

*Numerous anti-union dismissals and violations of collective agreements.* In this connection, the Committee notes the Government's indication that, as a result of an investigation carried out by the labour courts it was found that there are very few complaints relating to anti-union dismissals. The Committee nevertheless emphasizes that the trade union organizations of the country in their latest communication refer to many cases of anti-union dismissals and that there are complaints before the Committee on Freedom of Association on this subject. With regard to the violation of collective agreements, according to a joint investigation undertaken by the Ministry of Labour and Social Security and the labour courts, it was found that in the few complaints that are made the parties to the conflict use the Joint Board to reach a settlement directly through conciliation.

According to the conclusions of the technical assistance mission, the fall in trade union membership has very different causes, although emphasis should be placed on the excessive slowness of procedures in cases of anti-union discrimination, the abuse of the appeal procedure for constitutional rights (*amparo*) and the inefficiency of the system of penalizing violations of labour and trade union legislation. The mission also concluded that cases of failure to comply with collective agreements can be taken through the usual court procedures, but that in practice this process, in the same way as the penalization of violations of labour law, can also take years. ***The Committee notes that the problems referred to persist and requests the Government to provide information on the complaints made.***

*Inadequacy of guarantees in the procedure for the termination of public officials* (section 79 of the Civil Service Act; section 80 of the Regulations issued under this Act; Decree No. 35-96 amending Decree No. 71-86 of the Congress of the Republic; and Government decision No. 564-98, of 26 August 1998). In this context, the Committee notes the Government's indication that the relevant provisions are contained in the Political Constitution of the Republic, the Labour Code, the Civil Service Act and its Regulations, and the Act on unionization and regulation of the right to strike by state employees. To impose a penalty, which may range from a verbal warning to termination of employment, it is necessary to comply with the requirements set out in the law, without which the penalties may be void. This shows that there are adequate guarantees in the procedures for the termination of public officials from the view point of the right of

defence and the remedies available to workers. The Committee notes this information and understands that this issue was raised years ago by trade union organizations which were calling for a system of termination of employment in the public sector similar to the one set out in the Labour Code.

*Need for the Code of Labour Procedures to be subject to in-depth consultations with the most representative organizations of workers and employers.* In this connection, the Committee notes the Government's view that it is not necessary to amend the Code of Labour Procedures. The Government adds that the magistrates of the Supreme Court of Justice maintain constant and productive dialogue with all the labour court judges in the country and that the objective is to make labour procedures more efficient and entirely oral, so that they can be more expeditive. The Government adds that the Extraordinary Commission for reforms in the judicial sector of the Congress of the Republic prepared a draft text which approves amendments to the Act respecting the protection of constitutional rights (*amparo*) which has received a favourable opinion and that the text was discussed and approved in the plenary of the Congress of the Republic in two readings. This proposed reform was the subject of broad consultation with the magistrates of the Supreme Court, the National Commission to follow up and support the strengthening of justice, officials of the Office of the Public Prosecutor, the public criminal defence service, representatives of the college of advocates and sectors of civil society. The reform is intended to make the process of seeking constitutional protection (*amparo*) more flexible and convert it into a system that is only used in special circumstances, brief and effective in its function of protecting fundamental human rights. In this way, it is intended to minimize the problems that are currently occurring in which the process of the protection of constitutional rights has given rise to delays and increased the workload of the courts through abusive actions. **The Committee requests the Government to provide information on developments in this draft reform.**

*Bill on civil service reform.* On this subject, the Committee notes that the initiative to reform the Civil Service Act was the subject of broad consultations. The Bill has received one favourable opinion and another that is unfavourable in the Congress of the Republic. The Government indicates that it has requested technical assistance to assess and make the necessary recommendations and proposals on the compatibility of the initiative with the Convention. **The Committee hopes that this technical assistance will be provided in the near future.**

*Other matters.* The Committee previously requested the Government, in the context of the Tripartite Commission, for an evaluation to be made of the various specific issues on which the institutional system for the defence of trade union rights remains deficient. In this respect the Committee notes the Government's indication that meetings were initiated recently in the Tripartite Subcommittee on Legal Reforms, which will examine this issue.

The Committee further notes that, in general, the mission considered that the legislation that is in force raises obstacles to the appropriate development of trade union activities. In its report, it indicates that in 2005 and 2006, a total of 13 and 17 agreements were concluded respectively. The mission considered that the roots of the problem in Guatemala in relation to freedom of association and collective bargaining are to be found in the existence of a legal labour system, in both substance and procedural terms, which prevents and hinders the appropriate development of trade union activity, and accordingly of collective bargaining, as indicated by the ILO supervisory bodies in relation to Conventions Nos 87 and 98. Without their reform, it is very difficult to propose an appropriate solution and, moreover, the social partners and the Government display an approach that is entwined with attitudes arising out of this legal system. The Committee notes that this system gives priority to labour stability in collective disputes, which can last for years when they go to the courts. In a certain way, collective bargaining has been exchanged for labour stability, which does not ensure the effective application of *Article 4* of the Convention.

The mission also considered that the Ministry of Labour is very weak for various reasons (budget, staffing, facilities, etc.), and even more so since a ruling by the Constitutional Court that it cannot judge and penalize violations of labour rules. This decision relieved the labour administration of the little enforcement capacity that it had. In this respect, the Committee notes the Government's indication that the General Labour Inspectorate is competent to receive complaints of violations of the trade union rights of state workers and: (a) to participate as a conciliator, in accordance with the ruling by the Jurisdictional Disputes Tribunal of the Supreme Court of Justice of Guatemala; or (b) to submit them to the courts. The Government adds that the first of these channels is currently used to find alternative settlements to the innumerable collective disputes between the public administration and its employees.

With regard to the Tripartite Committee, the Committee notes the view of the mission that the Tripartite Committee requires technical assistance to improve its operation. **It requests the Government to forward this assessment to the Tripartite Committee.** According to the report of the mission, the Tripartite Committee fulfils a very valuable role of social dialogue and of slowing down undesired legislative initiatives and proposals, and of examining and resolving collective disputes, but it does not manage to make joint proposals in the case of most pending problems. The main conclusion of the mission is that in recent years, despite the various ILO missions, the serious problems raised by the Committee of Experts persist and that dialogue in the Tripartite Committee has not resolved them. In the meantime, the unionization rate, according to the trade unions, is between 0.5 and 1.88 per cent and the number of collective agreements is very low. In any case, detailed statistics of trade union membership and collective bargaining, including the number of workers covered, do not exist and it would be necessary to find a solution to this situation. The Committee observes that the mission welcomed the request by the Government (and the Labour Commission of the Congress) for additional ILO assistance to overcome the remaining problems, and for the organization of tripartite seminars on trade union rights in export processing zones.

The Committee notes the Government's indication that the mission was very useful. As a result of its work, the Committee notes the Government's indication that tripartite seminars have been carried out on freedom of association and collective bargaining in the export processing sector and that meetings were convened of the Legal Reform Subcommission, the pending issues were reviewed and priorities established, in terms of the subjects to be considered. The comments made by the Committee have been reviewed, and certain of them had already been reviewed and obtained consensus in 2001. The Committee notes the Government's request for continued technical assistance.

Nevertheless, the Committee observes with concern that the serious problems on which it has been commenting for numerous years persist and that, despite the tripartite discussion at the national level and the technical assistance provided on various occasions, there has been no major progress. *The Committee strongly hopes that the new Government, with the assistance of the mission suggested by the Conference Committee that will take place at the end of April 2008, will provide evidence of the political will to resolve these issues. The Committee requests the Government to provide information in its next report on any positive development that occurs in relation to the various issues referred to above.*

## Guinea

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

The Committee notes that the Government's report has not been received. It also notes the comments of 28 August 2007 by the International Trade Union Confederation (ITUC) reiterating the comments made in 2006 by the International Confederation of Free Trade Unions (ICFTU, now ITUC) on matters already raised by the Committee. The ITUC reports recurring intimidation and threats against trade union leaders and violent repression of strikes by the police. *The Committee hopes that the Government will do its utmost to ensure that henceforth the rights of workers' and employers' organizations are fully observed in a climate free from violence and pressure or threats of any kind against the leaders and members of these organizations. The Committee requests the Government to send its observations on the ITUC's comments.*

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 section 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.

While noting the difficulties the country is facing, the Committee reminds the Government that in its last report it undertook to take account of the Committee's comments when revising the Labour Code. *The Committee trusts that the Government will address these matters very shortly, in consultation with the representative organizations of employers and workers concerned, and asks it to keep it informed of any developments in the situation.*

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

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

1. The Committee notes that the Government's report has not been received. It also notes the comments made by the International Trade Union Confederation (ITUC) dated 28 August 2007 concerning legislative matters already raised by the Committee and denouncing recurrent acts of anti-union discrimination and interference.

2. The Committee refers again to the points contained in its previous comments concerning the need to amend the national legislation.

*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 set out in the Labour Code, against anti-union discrimination at the time of recruitment and during employment; (b) to explicitly provide 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 with regard to recruitment, performance and distribution of work, termination of the employment contract, etc.

*Article 2.* Request to include in the draft Labour Code specific provisions prohibiting acts of interference in the internal affairs of workers' and employers' organizations accompanied by efficient and speedy procedures and sufficiently dissuasive sanctions.

*The Committee hopes that the provisions of the future Labour Code will be in full conformity with Articles 1 and 2 of the Convention. The Committee requests the Government to keep it informed of all developments in this regard.*

## Guinea-Bissau

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

The Committee notes the Government's reply to the comments submitted by the International Trade Union Confederation (ITUC) which refer to the issues examined by the Committee.

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

1. *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 to give agricultural workers and dockworkers the rights envisaged in the Convention. The Committee notes that according to the ITUC's comments, there are only bilateral negotiations between employers and workers, and the Tripartite National Council for National Consultation has not managed to negotiate wages. The Committee notes that the Government only states that collective bargaining is regulated by Chapter XI of Act No. 2/86 and makes no reference to the process of revision of the General Labour Act, in particular the provisions of Title XI on collective bargaining, nor to steps taken to give agricultural workers and dockworkers the rights envisaged in the Convention. ***In these circumstances, the Committee expresses its concern about the situation and once again asks the Government to provide information in this regard.***

2. The Committee notes that the Government has not provided any information on measures taken to secure the adoption of the special legislation which, under section 2(2) of Act No. 8/41 on freedom of association, was to regulate the right to collective bargaining for public servants who are not engaged in the administration of the State. ***Consequently, the Committee once again asks the Government to provide information in this respect.***

3. Finally, the Committee previously requested 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 the Government's indication that there are two collective agreements for the banking and telecommunications sectors, and agreements concluded between the Government and the National Union of Workers of Guinea (UNTG). The Committee considers the number of collective agreements in force to be very low. The Committee reminds the Government 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 utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements". ***The Committee asks the Government to take specific steps to promote the greater utilization in practice of collective bargaining in the private and public sectors and to keep it informed of any developments in this respect, the number of new agreements concluded and the number of workers covered by such agreements.***

## Guyana

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

The Committee takes note of the Government's report. 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 notes 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.*

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

The Committee notes the Government's detailed reply to the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation).

The Committee notes that the Government did not deny the ICFTU's comment to the effect that, in December 2005, it set the level of the public sector pay raise without consulting the Guyana Public Service Union (GPSU) – in breach of the collective agreement with the union. *The Committee recalls the importance it attaches to the respect of collective agreements and requests the Government to ensure that collective agreements are respected in the future.*

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 keep it informed of the results of the consultative process.*

## **Haiti**

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

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

1. *Comments from the ICFTU (now ITUC – International Trade Union Confederation) and the ITUC.* In its previous observation, the Committee noted a communication from the International Confederation of Free Trade Unions (ICFTU) dated 10 August 2006, which referred to a raid carried out by armed policemen at the premises of a higher level trade union organization, the Trade Union Confederation of Haiti (CSH). The Committee notes the communication from the ITUC dated 28 August 2007, which refers to legislative issues already addressed by the Committee in relation to dispute settlement mechanisms and the exercise of the right to strike. *The Committee requests the Government to send its comments on the observations of the ICFTU and the ITUC and to indicate whether an inquiry has been launched into the murder of trade union delegate Guillaume Lafontant and, if so, to inform it of the outcome of the inquiry and any subsequent action taken.*

2. *Amendment of the legislation.* The Committee recalls that for many years now its comments have referred to the need to:

- take steps to amend section 34 of the Decree of 4 November 1983, which gives the Government broad powers of supervision over trade unions, and 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;
- bring national legislation into line with the provisions of article 35 of the Constitution of 1987, which guarantees freedom of association and protection of workers' rights in both the public and the private sectors;
- amend sections 233, 239 and 257 of the Labour Code, so as to remove all impediments to the right of association of minors and domestic workers and give foreign workers access to trade union office, at least after a reasonable period of residence in the country; and
- repeal or amend section 236 of the Penal Code, under which government consent is required for the establishment of an association of more than 20 members.

The Committee recalls the Government's indication that the Labour Code has been under revision since April 2000, but that, due to political troubles and the absence of Parliament, it has not been possible to complete the new draft. *The Committee hopes that the Government's next report will indicate that progress has been made in reviewing national legislation for the purposes of bringing it into line with the Convention and trusts that all the points mentioned will be*

*taken into consideration. The Committee reminds the Government that it may request technical assistance from the Office.*

3. Finally, the Committee previously noted that certain categories of workers, such as public service employees, workers in the rural sector, independent workers and domestic workers, were excluded from the scope of the Labour Code. It asked the Government to specify the texts ensuring and governing the trade union rights of workers in the rural sector, independent workers and domestic workers. It also asked the Government to provide a copy of the Decree of 17 July 2005 amending the Act of 1982 regulating the public service. *The Committee urges the Government to provide the information and text requested.*

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

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

1. *Comments by the ITUC.* The Committee takes note of a communication of 28 August 2007 from the International Trade Union Confederation (ITUC) on matters already raised concerning legislative issues relating to the dispute settlement machinery and acts of discrimination and interference in certain enterprises which have not been sanctioned. According to the ITUC, workers in rural areas and the informal economy, self-employed workers and domestic workers are not covered by the Labour Code and have no trade union rights. Furthermore, according to the ITUC, the labour inspectorate is unable to operate and the courts system is dysfunctional.

2. *Articles 1, 2 and 4 of the Convention.* In its previous comments the Committee asked the Government to keep it informed of any developments concerning: (i) the adoption of a specific provision establishing protection against anti-union discrimination in hiring practices; (ii) the adoption of provisions providing in general adequate protection for workers against acts of anti-union discrimination, accompanied by efficient and swift procedures and sufficiently dissuasive sanctions; and (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.

The Committee recalls that in its 2005 report, the Government stated its intention of taking all necessary measures to protect workers against all forms of anti-union discrimination, provide workers' and employers' organizations with adequate protection against acts of interference in each other's affairs, and establish the conditions for encouraging and promoting the development and broadest possible use of voluntary bargaining procedures. The Committee notes that, according to the ITUC, the new Government has reiterated these commitments but no progress has been noted as yet.

*While noting the difficulties the country is confronting, the Committee expresses the hope that the Government will be in a position to report progress in the near future in the adoption of legislative measures to bring the national legislation into line with the Convention and reminds it that the technical assistance of the Office is at its disposal. It also asks the Government to provide detailed information in response to the ITUC's observations and on developments in the situation.*

## **Honduras**

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

The Committee notes the Government's report and its reply to the comments sent by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) on 10 August 2006, which referred to issues of law that are currently under examination and the murder of Francisco Cruz Galeano, a trade union leader of the General Workers' Confederation (CGT) in December 2005. With regard to the latter, the Committee notes the Government's indication that the Secretariat of Labour and Social Security has undertaken a full investigation through the competent bodies, which concluded that the trade union leader concerned was not murdered by reason of his position as a trade union leader, but was mistaken for the leader of a group of delinquents by two members of a rival group, of whom one was murdered in May 2006 and the other is on the run.

The Committee observes that for many years it has been referring to the need to reform the legislation so as to bring it into conformity with the Convention. The Committee recalls that in its observation in 2005 it noted the preparation of a draft reform of the Labour Code, which included several amendments requested by the Committee, and which had been preceded by a tripartite study. In this regard, the Committee notes the Government's indication that the Economic and Social Council is envisaging in its plan of activities for the present year the harmonization of the Labour Code with international labour Conventions, thereby achieving consensus with the social partners. The Committee recalls that its comments referred to:

- the exclusion from the scope of the Labour Code, and consequently from the rights and guarantees of the Convention, of workers in agricultural and stock-raising enterprises which do not permanently employ more than ten workers (section 2(1));

- 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 federations and confederations exercise this right without any interference by the State;
  - 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). In this respect, the Committee notes the Government's indication that this provision refers to services that are essential for society and is intended to offer the appropriate conciliation machinery to resolve disputes occurring in these sectors;
  - 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 expresses the firm hope that the harmonization of the Labour Code with the Convention will be undertaken in the near future and that all the issues raised by the Committee will be taken into account. The Committee reminds the Government that the Office's technical assistance is at its disposal.*

Finally, the Committee notes the new comments by the ITUC, dated 28 August 2007, which refer to legislative issues that are still pending, as well as to the impossibility of establishing unions in export processing zones; the formulation by the President of a Bill to reform the Procedural Penal Code establishing more severe penalties for action on the public thoroughfare (blockages of roads, bridges and streets, for example), which may affect the activities of trade unions; obstacles to the establishment of trade unions, the promotion of unions by the management of private enterprises and the detention of union members in the banking sector when they wished to participate in a wage claim. *The Committee requests the Government to provide its observations on these matters.*

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

The Committee notes the Government's report and its reply to the comments of 10 August 2006 from the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation), which referred mainly to issues relating to the legislation and the application of the Convention in practice which have already been examined, as well as the failure to comply with a collective agreement in the mining sector. With regard to the latter issue, the Committee notes the Government's indication that the Secretariat of Labour and Social Security has not received any complaint in this respect. Nevertheless, the Secretariat is engaged in a procedure relating to other complaints against the mining company concerned.

The Committee recalls that it has been referring for many years in its comments to:

- the lack of adequate protection against acts of anti-union discrimination, since the penalties established in section 469 of the Labour Code for persons who prejudice the right to freedom of association range between 200 and 10,000 lempiras (200 lempiras being equivalent to around US\$12), which were deemed inadequate by one workers' confederation; and
- the lack of adequate and full protection against any acts of interference, and of sufficiently effective and dissuasive sanctions for such acts. *Article 2 of the Convention* provides for protection for workers' and employers' organizations against any acts of interference by each other (or their agents), with particular reference to acts that are intended to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means with the objective of placing such organizations under the control of employers or employers' organizations. This protection is considerably broader than that envisaged in section 511 of the Labour Code, which is confined to providing that members of a union whose tasks entail representing the employer or who hold positions of management or personal trust, or who are easily able to exert undue pressure on their colleagues, may not hold trade union office.

In this respect, the Committee recalls that in its observation of 2005 it noted the preparation of a draft reform of the Labour Code incorporating a number of the amendments requested by the Committee, which had been preceded by a tripartite study. The Committee notes that in its report the Government reiterates its commitment to considerably strengthening tripartite dialogue as a tool for social and equitable development with a view to improving the labour legislation, with particular reference to section 469 of the Labour Code so as to ensure that it is more effective and thereby guarantees respect for the freedom to organize and to engage in collective bargaining. The Government retains the firm hope that the Economic and Social Council, which serves as a concerted social dialogue body, will serve as the forum in which all matters relating to the necessary and urgent reforms of the labour legislation will be analysed and discussed with a view to harmonizing it with ratified ILO Conventions.

***The Committee expresses the firm hope that in the near future the Government will take the necessary measures to include in the national legislation adequate and full protection against any acts of anti-union discrimination or interference and will establish sufficiently effective and dissuasive sanctions against such acts. The Committee reminds the Government that the Office's technical assistance is at its disposal.***

Finally, the Committee notes the communication dated 28 August 2007 from the ITUC which refers to pending issues relating to the legislation and the application of the Convention. Furthermore, according to the ITUC, public employees are prohibited from concluding collective labour agreements, the Labour Code restricts the matters which may be covered by bargaining and empowers the Ministry of Labour to approve the content of a collective agreement. The ITUC also refers to the dismissal of numerous trade union leaders and members following the establishment of a trade union. ***The Committee requests the Government to provide its comments on these matters.***

## Iceland

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

The Committee takes note of the Government's report. It observes that the Government refers to two collective agreements which improve the situation of foreign and disabled workers.

The Committee recalls that 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 notes the information contained in the Government's report with regard to the activities of the State Conciliation and Mediation Service – which operates under the Trade Unions and Industrial Disputes Act, No. 81/1938 as subsequently amended. The Committee notes from the Government's report that most collective agreements in Iceland, including in the fishing sector in which compulsory arbitration had been imposed in the past, came up for review in the period 2003–04, were extended for two years and will therefore come up again in 2007 and 2008.

The Committee also 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 requests the Government to keep it informed of the renegotiation of the collective agreements which come up for review in 2007 and 2008, including in the fishing sector. The Committee also requests the Government to continue to keep it informed of 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.***

## Indonesia

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

The Committee takes note of the information contained in the Government's report as well as its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in 2006. The Committee notes the comments made by the ITUC in a communication dated 27 August 2007 with regard to police violence, dismissals and acts of retaliation against strikers. ***The Committee requests the Government to provide its observations thereon.***

The Committee takes note of the entry into force of the Industrial Relations Dispute Settlement Act No. 2 of 2004.

1. *Civil liberties.* The Committee's previous comments concerned the issuance of Guidance on the Conduct of Indonesian Police concerning Law Enforcement and Order in Industrial Relations Disputes with ILO technical assistance, and the need to ensure its practical implementation.

The Committee notes that in its 2006 comments, the ICFTU refers to continuing police interference in industrial disputes in order to break up strikes in various companies and the interrogation of trade union leaders on the basis of an old colonial law prohibiting vague and unspecified "unpleasant acts" against employers.

The Committee notes that the Government indicates that the cases to which the ICFTU refers have been settled by the parties and adds that pursuant to the issuance of the Guidance, the police are allowed to be present during the settlement of industrial disputes but their role is to remain at a distance strictly for security purposes. The Government states that the police no longer play any part in the settlement of the disputes.

***The Committee asks the Government to continue to provide information on measures taken, including the 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.***

2. *Right to organize of civil servants.* In previous comments, the Committee had requested the Government to specify any act or regulation ensuring the implementation of the right to organize of civil servants pursuant to section 44 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. The Committee notes that the Government's report does not contain any information in this regard. In previous communications the Government had indicated that such Act had not yet been adopted. ***The Committee requests the Government to indicate in its next report the steps taken for the adoption of an Act guaranteeing the exercise of the right to organize to civil servants pursuant to section 4 of Act No. 21 of 2000, and to indicate the manner in which civil servants organize in practice, while the adoption of legislation is pending, including statistics on the number of civil servants' organizations at various levels.***

3. *Right to organize of employers.* The Committee had requested the Government to provide a copy of any rulings made concerning the right to organize of employers pursuant to section 105(1) of Manpower Act No. 13 of 2003, which grants this right to employers and adds that "rulings concerning entrepreneurs' organizations shall be determined and specified in accordance with valid statutory legislation". The Committee notes that the Government's report does not contain any information in this regard. In previous communications, the Government had indicated that employers' organizations are regulated by Act No. 1 of 1987, concerning the Chamber of Commerce and Industry (KADIN). The basic internal regulation of KADIN states that APINDO (the main employers' association) is a branch of KADIN dealing with industrial relations and labour issues. ***The Committee requests the Government to provide a copy of Act No. 1 of 1987, as well as the internal regulation of KADIN, in its next report and to specify whether in general, other employers' organizations can be established independently of the KADIN.***

4. *Conditions for the exercise of the right to strike.* In previous comments, the Committee had noted that for a strike to be considered legal it must be carried out subsequent to "failed negotiations" (section 3 of Ministerial Decree No. KEP. 232/MEN/2003) and that negotiations shall be considered failed only if both sides make a declaration to this effect in the negotiation minutes (section 4 of the abovementioned Decree). Noting from the Government's report that the right to strike is a basic right that should be carried out legally, orderly and peacefully as a consequence of failed negotiations, 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 requests the Government to indicate in its next report the measures taken or contemplated 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.***

5. The Committee further notes that the ICFTU indicates that the law contains further restrictive conditions for the exercise of the right to strike; for instance, a requirement to indicate the ending time of the strike before its commencement. ***Noting that the Government has not responded to these comments, the Committee once again requests the Government to provide its observations in this respect.***

6. *Exhaustion of mediation/conciliation procedures.* The Committee notes from the comments made by the ICFTU that the Industrial Relations Dispute Settlement Act No. 2 of 2004 imposes as a precondition for the lawful staging of strikes, a lengthy mediation procedure. The Committee notes from the Government's reply to the ICFTU comments that the strike is a basic right that should be carried out legally, orderly and peacefully as a consequence of failed negotiations, and as long as these conditions are fulfilled, the worker does not break the law. The Committee observes that sections 3(2), 4(4), 15 and 25 of the Industrial Relations Dispute Settlement Act No. 2 of 2004, appear to establish: (i) an initial period of 30 working days during which an attempt should be made to settle disputes through bipartite negotiations (section 3(2)); (ii) an (unspecified) time period during which the parties are invited to file their dispute to the Manpower Office and select either conciliation or arbitration, and if they fail to select either one, seven working days within which

the Manpower Office will transfer their dispute to mediation (section 4(4)); (iii) an additional 30 working days reserved to mediation (section 15); (iv) 30 working days reserved to conciliation (section 25); or (v) if mediation/conciliation fails, sections 5 and 14 provide that one of the parties may refer the dispute to the Industrial Relations Court for arbitration (see in this regard, the Committee's comments under Convention No. 98).

The Committee notes that the text of Act No. 2 of 2004 does not explicitly indicate whether the parties may stage strikes while mediation/conciliation is under way or whether they should wait for these lengthy procedures to be concluded before they may lawfully stage industrial action. The Committee notes that the requirement to exhaust procedures extending beyond 60 working days (three months), as a precondition for a strike to be staged lawfully, would render the exercise of the right to strike very difficult or even impossible in practice. ***The Committee 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.***

7. *Objectives of strikes.* The Committee had asked the Government to indicate whether workers may exercise industrial action in protest of social and economic policy without penalty. It notes that the Government's report does not contain any information in this regard. It observes, however, that it would appear from sections 3 and 4 of Ministerial Decree No. KEP. 232/MEN/2003 (see above), that the possibility of strikes is linked to the negotiation of an enterprise-level collective agreement; moreover, it would appear from information provided by the Government in its report under Convention No. 98 that federations and confederations do not engage in negotiations at above-enterprise levels. The Committee observes that the above appears to exclude the possibility of staging industrial action on general, social and economic policy questions. The Committee recalls that although purely political strikes do not fall within the scope of freedom of association, 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 (General Survey of 1994 on freedom of association and collective bargaining, paragraph 165.) ***The Committee requests the Government to indicate in its next report the measures taken or contemplated so as to allow trade union federations and confederations to engage in industrial action linked to questions of general social and economic policy.***

8. *Restrictions on the right to strike in essential services.* The Committee notes from the ICFTU comments that section 5 of Ministerial Decree No. KEP.232/MEN/2003 provides that strikes at "enterprises that cater to the interests of the general public and/or enterprises whose activities would endanger the safety of human life if discontinued are declared illegal" (Ministerial Decree KEP.232/MEN/2003), without specifying what types of enterprises are included in this classification, thus leaving the matter to the Government's discretion. According to the ICFTU, strikes have been prohibited in practice in the public sector, essential services and enterprises serving the public interest. The Committee notes that according to the Government, in line with the explanatory note on section 139 of Manpower Act No. 13 of 2003, enterprises serving the public interest and/or enterprises whose activities when interrupted by strikes endanger the safety of human life, are hospitals, the fire department, the railway service, enterprises in charge of sluices, those in charge of regulating air traffic and those in charge of sea traffic. In this regard, the Committee refers the Government to its comments below concerning the railway service.

9. *Restrictions on the right to strike in the railway service.* The Committee had requested the Government to take the necessary measures so as to ensure that railway employees may fully exercise the right to strike without penalty. The Committee notes that the Government's report does not contain any information in this regard. In previous reports, the Government had indicated that the explanatory note on section 139 of Manpower Act No. 13 of 2003, provides that only railway intersection officers are included among the workers that relate to public safety since they have specific duties which differ from those of other railway workers; consequently, they can go on strike as long as someone is on duty. ***Recalling that railway services generally cannot be considered as an essential service, the Committee requests the Government to indicate in its next report the measures taken or contemplated so as to ensure that section 139 of Manpower Act No. 13 can only be used to restrict the right to strike of railway intersection workers.***

10. *Sanctions for strike action.* In previous comments, the Committee had requested the Government to amend its legislation so as to ensure that the sanctions for illegal strike action are not disproportionate, given that heavy sanctions can be imposed, under section 185 of the Manpower Act, for violations of section 139 of the Manpower Act (one to four years' imprisonment and/or a fine from Rp.100,000,000 to Rp.400,000,000). ***The Committee notes that the Government's report does not provide information in this regard and once again requests it to amend the sanctions imposed under section 185 of the Manpower Act for illegal strike action in violation of section 139 of the Manpower Act so as to ensure that such sanctions are not disproportionate to the seriousness of the offence. The Committee would point out in this regard that any violent act can always be punished under the general penal law. However, penal sanctions for participation in a peaceful strike action should not be resorted to.***

11. The Committee notes from the ICFTU comments that according to section 6(2) and (3) of Ministerial Decree No. KEP.232/MEN/2003, in case of an illegal strike, the employer may make two written appeals within a period of seven

days for workers to return to work, and if the workers do not respond, they are considered as having resigned. According to the ICFTU, such appeals are commonly used by employers as intimidation tactics against strikers. The Committee notes from the facts of cases brought before the Committee on Freedom of Association (e.g. Case No. 2472, 348th Report), that employers have the possibility to issue written appeals, and in case of non-response, consider workers as having resigned, pending a final finding as to the legality of the strike by an impartial body; in these cases, the employer may suspend the workers in question while waiting for the finding of illegality by the competent body, at which point, the employer is authorized to dismiss the workers retroactively. The Committee observes that as a result of this practice, along with the numerous and stringent legal requirements which make the staging of legal strikes very difficult if not impossible in practice, workers run the risk of dismissal within a context of uncertainty as to the lawfulness of their strike; all of this is likely to intimidate workers into abandoning the strike. Under these conditions, the Committee is of the view that the issuing of back-to-work appeals by the employer should be possible only after a final finding by an independent body that a strike is indeed illegal and not pending such a decision. ***The Committee requests the Government to indicate in its next report the measures taken to amend section 6(2) and (3) of Ministerial Decree No. KEP 232/MEN/2003 to ensure that employers may not issue appeals to striking workers to return to work prior to a finding by an independent body that a strike is illegal.***

12. *Dissolution and suspension of organizations by administrative authority.* The Committee had noted that if trade union officials violate either section 21 or 31 of the Trade Union/Labour Union Act No. 21 of 2000 – by either failing to inform the Government of any changes in the union’s constitution or by-laws within 30 days or failing to report any financial assistance coming from overseas sources – serious sanctions can be imposed under section 42 of the Trade Union/Labour Union Act, namely, the revocation and loss of trade union rights or suspension. The Committee had requested the Government to repeal the reference to sections 21 and 31 in section 42 of the Trade Union/Labour Union Act so as to provide for means other than suspension of trade union rights for rectifying delays in notification. The Committee further noted that legislation requiring authorization for a national trade union to accept financial assistance from an international organization of workers infringes the right to affiliate with international organizations of workers and to benefit from such affiliation, and requested the Government to provide further details on the manner in which the obligation to report any financial assistance coming from overseas is applied in practice. The Committee notes that the Government’s report does not contain any information in this regard. The Government had indicated in the past that it still applied regulations obliging trade unions to report any financial assistance coming from overseas, according to section 31 of the Trade Union/Labour Union Act, in order to secure that the assistance is utilized for the improvement of the welfare of the union members and not for other improper purposes. Moreover, the sanction provided under section 42 is aimed to ensure that trade unions have administrative discipline and has never been applied until now.

While noting the fact that section 42 has never been applied and that according to the Government it mainly serves a dissuasive purpose, the Committee considers that the sanction of suspension for a failure to report a change in the trade union’s constitution or by-laws (as a result of sections 21 and 42 of the Trade Union/Labour Union Act) is clearly disproportionate and that section 31(1) read together with section 42 is tantamount to requiring previous authorization for the receipt of funds from abroad, which is contrary to *Articles 3 and 6 of the Convention* (on the contrary, there is no infringement of the Convention if, for example, the supervision is limited to the obligation of submitting periodic financial reports (see General Survey on freedom of association and collective bargaining, 1994, paragraph 125)). ***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.***

13. In previous comments, the Committee had noted that section 42 of Trade Union/Labour Union Act No. 21 of 2000, also provides for the administrative sanction of revocation of a trade union’s record number (and consequent loss of trade union rights) in the event of trade union membership falling below the required minimum. In particular, the Committee had noted that there is a possibility to appeal to a judicial body against the governmental institutions that take such a decision under Act No. 5 of 1986 on the Administrative Court, and had requested the Government to indicate whether the appeal suspends the effect of the sanction until a judgement has been handed down and to provide a copy of Act No. 5 of 1986. In previous reports, the Government had indicated that the appeal did not have the effect of suspending the sanction and that Act No. 5 of 1986 had been amended by Act No. 9 of 2004.

The Committee, noting that the latest report by the Government does not provide any information in this regard, once again notes that measures of dissolution and suspension of trade unions by administrative authority involve a 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, in order to avoid the risk of arbitrary action. Thus, the organization affected by such measures must not only have the right of appeal to an independent and impartial judicial body, but the administrative decision should not take effect until that body hands down a final decision (see General Survey on freedom of association and collective bargaining, 1994, paragraph 185). ***The Committee requests the Government to indicate in its next report the measures taken or contemplated so as to ensure that measures of dissolution or suspension of trade unions by the administrative authority do not take effect until a final decision has been handed down by the Administrative Court in case of appeal.***

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

The Committee notes the information contained in the Government's report as well as its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in 2006. *The Committee notes the comments made by the ITUC in a communication dated 27 August 2007 and requests the Government to provide its observations thereon.*

*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 improve the system of protection against anti-union discrimination. In particular, the Committee had expressed the hope that Act No. 2 of 2004 concerning industrial relations dispute settlement would strengthen the effectiveness of the mechanism of protection against anti-union discrimination upon its entry into force in 2006, and requested the Government to provide information on steps taken by the labour inspectorate to this effect (number of visits, types of violations found, steps taken including penalties imposed, etc.), as well as any cases brought to the judicial bodies against alleged acts of anti-union discrimination and the decisions reached.

The Committee notes with interest the entry into force of Act No. 2 of 2004 which sets up a new system of tripartite labour courts, replacing the previous system of labour dispute committees. Under the new law, settlement of industrial disputes is first to be sought through bipartite negotiation. If no resolution is reached at this level, a mediator or conciliator can be brought in within 30 days. If that too fails, the dispute can be brought before the Industrial Relations Court and a verdict should be issued within 50 working days of the first hearing of the case. In case of acts of dismissal, an appeal is acceptable to the Supreme Court, which must make its ruling within 30 days.

The Committee also notes the numerous instances of anti-union discrimination and interference enumerated by the ICFTU and the ITUC in their comments. The Committee notes that although the Government's report refers to approximately 15,000 company visits by the labour inspectorate from 1 January 2006 to 1 June 2007, it also indicates that no finding of anti-union discrimination was made and that the various instances of discrimination and interference alleged by the ICFTU were either due to illegal activity on the part of the trade unionists concerned, or that the disputes have been settled by the parties with the assistance of the competent bodies. The Committee also recalls from previous comments that the Government had indicated in its previous report that there had been no anti-union discrimination cases judged by the courts and no proposal, complaint, permission or dismissal because of workers' membership in a trade union. The Committee finally notes that in its report the Government refers to the need to provide training on the provisions of Act No. 2 of 2004 to all stakeholders, including the judiciary, trade unions and employers, in order to widely understand the substance of the Act and ensure its implementation.

The Committee notes the conclusions and recommendations reached by the Committee on Freedom of Association in a series of recent cases concerning acts of anti-union discrimination and interference (Cases Nos 2236, 2336, 2441, 2451, 2472 and 2494). The Committee observes that on all cases brought before it the Committee on Freedom of Association observed, often with regret, that the administrative authorities failed to make an investigation into allegations of anti-union discrimination and interference, that the industrial dispute settlement bodies failed to address these allegations, and that the proceedings pending in some cases were excessively long; as a result, the Committee on Freedom of Association repeatedly urged the Government to take additional measures to ensure effective and comprehensive protection against acts of anti-union discrimination and interference and in particular, ensure that the role of the Government in relation to such acts is not confined to mediation and conciliation but also includes, where appropriate, investigation and enforcement.

The Committee notes that there is a stark contrast between, on the one hand, the text of the laws, for example, Acts Nos 21/2000 and 2/2004, which appear to conform with the Convention, and on the other hand, the communications of workers' organizations and the findings of the Committee on Freedom of Association which depict a different situation, akin to a substantial failure to provide protection against anti-union discrimination and interference in practice. In these circumstances, the Committee observes that the apparent lack of findings of anti-union discrimination on behalf of the labour inspectorate and the courts in a number of cases, constitute grounds for a certain concern and deserve closer attention and analysis in a tripartite context.

*In these circumstances, the Committee 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 recalls that technical assistance is at the Government's disposal and invites the Government to make full use of such assistance, including for training purposes, so as to ensure the practical implementation and eventual improvement of the new system for the resolution of industrial disputes under Act No. 2/2004.*

*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. Furthermore, noting that the ICFTU referred to an important number of acts of interference in trade unions' affairs, the Committee had requested the Government to supply statistics on the number of complaints lodged and the most frequent problems examined.

The Committee notes that the Government does not provide any statistical information and indicates that it does not intend to amend this Article which has been in force for only three years. The Government adds that in practice there is no problem, as there has been no case where employer interference has been observed; the relations between employers and workers at the company level in the context of the country is one of family relationships and the role of the employer during the voting process is to offer assistance when required.

The Committee refers to the comments made above with regard to the need to ensure adequate protection against acts of interference in practice. ***It 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.* 1. 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 from the Government's report that it has no intention of amending these provisions as, so far, there is no indication that anybody is being treated unfairly in the process of settling industrial disputes. The mechanism established by Act No. 2/2004 privileges bipartite settlement of disputes, and in practice 80 per cent of all cases are settled in this manner (in 2006, out of approximately 115,000 industrial conflicts, 90,000 were settled through bipartite negotiations).

The Committee once again recalls that compulsory arbitration at the initiative of one of the parties to an industrial dispute raises problems from the point of view of Convention No. 98 as it cannot be considered to promote voluntary collective bargaining. Compulsory arbitration should be possible only (i) if it is at the request of both parties to the dispute; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; or (iii) in essential services in the strict sense of the term. ***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 this is in accordance with the above.***

2. *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 from the Government's report that the parties entitled to sign a collective agreement are the plant level trade union and the respective company. The Committee recalls that the right to bargain collectively should be granted to federations and confederations and that the choice of bargaining level should be made by the partners themselves since they are in the best position to decide this issue (see General Survey on freedom of association and collective bargaining, 1994, paragraph 249). ***Noting that the Government's report does not provide any information in this regard, the Committee requests the Government to indicate in its next report the measures taken or contemplated so as to guarantee the right of federations and confederations to engage in collective bargaining and allow the parties to freely decide the level at which negotiations should take place.***

*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 that the Government indicates that there are no specific data regarding the number of collective agreements in EPZs but that compared to other localities, the number of collective agreements in the EPZs seems to be balanced with that in other industrial estates. The Government indicates, moreover, that the same laws and regulations apply throughout the territory of Indonesia, including the EPZs. The Government conducts training programmes for unions and employers on how to negotiate collective agreements, the benefits of collective bargaining and how to be best represented in this process. EPZs are among the priority targets.

The Committee notes this information. ***It 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.***

The Committee is addressing a request on another point directly to the Government.

## Iraq

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

The Committee notes the Government's report and the draft Labour Code of 2007. The Committee notes with interest that this draft legislation, which was drafted with the technical assistance of the ILO, applies to a significant extent the provisions of the Convention. It further notes the comments submitted by the International Trade Union Confederation (ITUC), which refer to serious violations of freedom of association and collective bargaining in practice, including instances of anti-union violence and the issuance of a directive prohibiting companies in the oil sector from cooperating with members of trade unions. *The Committee requests the Government to submit its observations thereon.*

Previously, the Committee had taken note of the allegations made by the ITUC in 2006 concerning serious cases of violence and other violations of freedom of association. In this respect, the Committee notes the Government's statement that it has not set any conditions impeding the setting up of trade unions in Iraq, but rather recognizes all trade union formations without distinction and strives to ensure their independence. The Government further states that certain trade union leaders had fallen victim to terrorist operations and that, although a climate of violence remained the general situation in all sectors of activity, it remained committed to eliminating this serious problem. The Committee, aware of the ongoing process of reconstruction and the climate of violence in the country, takes due note of the above information.

*Articles 1 and 3 of the Convention.* In its previous comments, the Committee had requested the Government to include in the legislation provisions guaranteeing adequate protection for workers against any acts of anti-union discrimination. In this regard, the Committee notes with interest that several provisions of the draft Code provide for protection against anti-union discrimination. Section 41(1) of the draft Labour Code provides that union membership or participation in union activities shall not constitute valid reasons for termination. Under section 39 of the draft Code, a worker whose employment has been terminated has the right to challenge his or her termination before the Employment Termination Committee or before the labour courts, within a period of 15 days after receiving notification of termination. Section 41(2) of the draft Code provides, moreover, that the Employment Termination Committee and the courts may order reinstatement and back pay in cases of unjust termination; where the worker does not demand reinstatement, or where reinstatement is not feasible, the Employment Termination Committee and the courts may order compensation in an amount at their discretion, provided that such compensation is sufficiently dissuasive so as to punish the unjust termination.

The Committee notes that section 139 of the draft Labour Code also affords protection from acts of discrimination, for limited time periods, to trade union founders and trade union presidents and workers' representatives, respectively. Section 139(1) provides that any dismissal and any measure short of dismissal whereby a trade union founder has been prejudiced shall be deemed to be anti-union discrimination, and shall be prohibited from the date of the lodging of an application for trade union registration until six months after the trade union has been registered. Similarly, section 139(2) states that protection from anti-union discrimination shall be granted to trade union presidents and workers' representatives for a period beginning 30 days before the election of the individuals concerned, if notice of their candidature had been given to the employer, and ending either 30 days after the election – if they had not been elected – or six months after the end of the performance of their duties as elected union officials. The Committee further notes that section 139(6) limits the scope of the protection established under section 139(2) to five workers in enterprises employing less than 50 workers, to seven workers in enterprises employing from 50 to 100 workers, and to two additional protected workers for every additional 100 workers employed in the enterprise. Finally, the Committee notes that under section 139(3) all acts of anti-union discrimination shall be deemed to be null and void, and employers found liable for such an offence shall be subject to a fine of 100–500,000 dinars.

The Committee notes, however, that the protections of section 139 do not extend throughout the full course of employment, including at the time of recruitment, and apply only to trade union founders, presidents and workers' representatives. The Committee additionally notes that sections 41 and 139 do not set out time frames for the completion of anti-union discrimination proceedings, and that, although section 41 states that compensation amounts "sufficiently dissuasive so as to punish dismissals" may be ordered, section 139 does not expressly provide for remedies to fully compensate victims of anti-union discrimination.

As regards adequate protection against acts of anti-union discrimination, the Committee recalls that such protection applies equally to trade union members and former trade union officials as to current trade union leaders, and covers not only dismissals but all measures of anti-union discrimination (transfers, demotions, and any other prejudicial acts). The Committee recalls moreover that the protection provided for in the Convention covers both the time of recruitment and the period of employment, including the time of work termination. Finally, the Committee recalls that the existence of general provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice. Hence, the importance of *Article 3* of the Convention, which provides that "machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize ..." as defined in *Articles 1 and 2* of the Convention. Such protection against acts of anti-union discrimination may thus take various forms adapted to national legislation and practice, provided that they prevent or effectively redress anti-union discrimination (see General Survey of 1994 on freedom of association and collective

bargaining, paragraphs 202–224). *The Committee requests the Government to take the necessary measures to amend the draft Labour Code so as to ensure for trade union members and representatives adequate protection against acts of anti-union discrimination, in accordance with the principles outlined above.*

*Article 4 of the Convention.* The Committee notes with interest that section 137(1) of the draft Labour Code provides that trade unions shall be entitled to represent their members in relation to any matter involving their collective interests, and to engage in collective bargaining. It additionally notes with interest that under section 141(1) collective bargaining may take place at all levels. The Committee further notes that section 142 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 concerned, or where a request to open collective negotiations has been jointly submitted by several registered trade unions if the latter collectively represent no less than 50 per cent of the workers to whom the collective agreement is to apply. In this connection, the Committee recalls that problems may arise when the law stipulates that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent: a 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 – or group of unions, as provided for in section 142 – covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in the unit concerned, at least on behalf of their own members (see General Survey, op. cit., paragraph 242). *The Committee requests the Government to take the appropriate steps to amend section 142 of the draft Labour Code accordingly.*

*Articles 1, 4 and 6.* The Committee had previously noted that Act No. 150 of 1987 concerning public servants does not contain any provisions ensuring that the guarantees provided for by the Convention apply to public servants and employees not engaged in the administration of the State. The Committee notes that section 2 of the draft Labour Code includes “workers listed as officials in state and public sector departments” within the scope of the draft Code’s provisions, but excludes “workers listed as civil servants and civil pensioners” from them. In this respect, the Committee recalls that *Article 6* authorizes to exclude public servants engaged in the administration of the State from the scope of the Convention and that, in defining this exception, a distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (government ministry officials, for example) and who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention (see General Survey, op. cit., paragraph 200). *In the light of the above, the Committee asks the Government to indicate the specific categories of workers covered by the term “civil servants and civil pensioners” in section 2 of the draft Labour Code, and to ensure that the draft Code includes a provision recognizing the application of the Convention’s guarantees to all public servants not engaged in the administration of the State.*

*The Committee expresses the hope that the Government will take the appropriate measures to bring the draft legislation into full conformity with the Convention and requests it to transmit a copy of the Labour Code upon its adoption.*

## Jamaica

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

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

It also notes the comments on the application of the Convention submitted by the International Trade Union Confederation (ITUC) on 28 August 2007 which refer to issues already raised and the non-deduction of union dues from the affiliates of the National Workers Union (NWU) in the oil sector. *The Committee requests the Government to send its observations on the ITUC’s comments as well as on those submitted by the International Confederation of Free Trade Unions (ICFTU) in 2006 which largely concerned legislative issues still outstanding and obstacles to the exercise of trade union rights in the export processing zones.*

The Committee underlines that it previously commented on 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 recalls that compulsory arbitration should be limited to essential services in the strict sense of the term or situations of acute national crisis and that, otherwise, recourse to compulsory arbitration should only be possible at the request of both parties to the dispute. *The Committee once again requests the Government to indicate in its next report any progress made in amending the legislation.*

### **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 is bound to repeat its previous comments on the application of *Article 4 of the Convention* which concerned:

- 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);
- the need to take measures to amend the legislation so that a ballot is made possible where 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.

*Recalling once again that, by ratifying the Convention, the State undertook to promote collective bargaining and that this implied granting of collective bargaining rights to the most representative trade union or (jointly) trade unions, the Committee hopes that the Government will take the necessary measures in order to amend its legislation, lowering the percentage mentioned and allowing a ballot in cases of conflicts of representativeness, so as to bring it into full conformity with the Convention in the very near future. The Committee requests the Government to keep it informed in this regard.*

The Committee also notes the comments on the application of the Convention submitted by the International Trade Union Confederation (ITUC) which refer in part to issues already raised. The ITUC refers also to some comments concerning anti-union discrimination and refusal to recognize a union and states that no union exists in the export processing zones.

*The Committee requests the Government to send its observations on the ITUC's comments.*

## Japan

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

The Committee takes note of the Government's report as well as its response to the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 10 August 2006; the Japanese Trade Union Confederation (JTUC–RENGO) dated 28 August 2006; the Japan Federation of Prefectural and Municipal Workers' Unions (JICHIROREN) and the National Network of Fire-Fighters (FFN) dated 13 April 2007 with regard to the issues previously raised by the Committee including the public service system reform and the right to organize of fire-fighters. It further notes the communication by the ITUC dated 27 August 2007 with regard to difficulties in trade union organizing due to an increase in precarious forms of employment and subcontracting, including for migrant workers and the communication of JTUC–RENGO dated 19 October 2007. *The Committee requests the Government to provide its observations on the latest comments by the ITUC and the JTUC–RENGO.*

1. *Denial of the right to organize of firefighting personnel.* The Committee recalls its long-standing comments concerning the need to recognize the right to organize for firefighting personnel.

The Committee takes note of the Government's report which reiterates its previous position to the effect that the services and functions of the fire defence in Japan correspond to those of the police and therefore fall under the exception of *Article 9 of the Convention*. In 1997 a system of fire defence personnel committees was created, allowing for the participation of fire defence personnel in decisions over their terms and conditions of employment. On 15 October 2004, eight years since the establishment of the system, certain improvements were agreed between the Minister of Internal Affairs and Communications and the representative of the JICHIROREN on the practices of the fire defence personnel committees, including with regard to the timing of the sessions of the committees (to be held in the first half of the fiscal year, from April to September, in order to allow enough time for budget allocations), the provision of feedback to employees who submitted opinions to the committees, the communication of summaries of the deliberations and opinions of the committees and the creation of a "liaison facilitator" system to provide explanations to the personnel (improvements introduced in the Order on the organization and operation of the fire defence personnel committees under article 14(5), paragraph 4, of the Fire Defence Organization Law).

The Committee notes that, according to the comments communicated by JICHIROREN and FFN, following a survey conducted in eight fire defence departments to which FFN officers belong so as to evaluate the implementation of the above improvements, it was revealed that no real progress had been achieved with regard to the right to organize of firefighters. In particular, committee meetings were scarce (held once a year), employees did not receive proper feedback, the "opinion coordinators" did not function properly and many opinions submitted by the employees had been dismissed as not falling under the committee deliberations, thus demonstrating overall the limited role that these committees could play. The Committee recalls that in previous comments, these organizations had indicated that, although they considered the fire defence personnel committees as an advancement in providing an opportunity to staff to state their own opinions, they also considered that these committees were not equivalent to giving personnel the right to organize and that the law needed to be amended in this respect.

The Committee notes from the Government's report that by March 2007, nearly 5,000 opinions annually and 60,000 in total had been discussed in almost all (99.6 per cent) of fire defence headquarters across the country, and each year about 40 per cent of the opinions were found to be appropriate for adoption and of those, more than half were implemented by the fire chief. These opinions concerned for instance, measures to counter smoking, the introduction of counselling as a means to counter stress, the improvement of the office environment such as nap rooms for those on shift, etc. Almost 80 per cent of the opinions discussed have been submitted through liaison facilitators. In a recent notification the Government invited all local authorities to fully implement the relevant discussions and the liaison facilitator system. The Committee further takes note of the information provision and training measures to ensure the full implementation of the system.

The Committee once again recalls that as early as 1973, it had stated that it “does not consider that the functions of fire defence personnel are of such a nature as to warrant the exclusion of this category of workers under *Article 9 of the Convention*” and hoped that the Government would take “appropriate steps to ensure that the right to organize is recognized for this category of workers” (ILC, 58th Session, Report III(4A), page 122). ***The Committee therefore once again requests the Government to indicate in its next report the additional legislative measures taken or contemplated in order to ensure that fire defence personnel are guaranteed the right to organize.***

2. *Prohibition of the right to strike of public servants.* The Committee takes note of the interim conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2177 and 2183 (329th Report, paragraphs 567–652, and 331st Report, paragraphs 516–558) 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 (329th Report, paragraph 641, and 331st Report, paragraph 554). The Committee recalls that in its previous comments it had referred to the detailed comments of the Fact-Finding and Conciliation Commission on Freedom of Association which stressed the importance “... in circumstances where strikes are prohibited or restricted in the civil service or in essential services within the strict meaning of the term, of according sufficient guarantees to the workers concerned in order to safeguard their interests” (ILC, 63rd Session, 1977, Report III(4A), page 153).

The Committee recalls that it has expressed concern in the past at the lack of progress in this regard, given that the Government has been confined ever since the Fact-Finding and Conciliation Commission on Freedom of Association took place (ILC, 64th Session, 1978, Report III(4A), page 143), to noting that the Supreme Court of Japan maintained throughout its judgments that the prohibition of strikes by public servants is constitutional. ***Noting that the Government's report once again repeats its previously stated position, 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.***

3. *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, as well as the complainants National Confederation of Trade Unions (ZENZOREN) and JICHIROREN make efforts with a view to achieving rapidly a consensus on the reform of the public service and on legislative amendments addressing the issues raised above and many others.

The Committee takes note of the comments made by JTUC–RENGO and the ICF TU to the effect that on 24 December 2005, the Government adopted an “Essential Policy for Administrative Reform” which represented a major switch from the previous policy of the General Principles for Civil Service System Reform in that it provided for “frank dialogue and adjustment with the parties concerned” in order to achieve the implementation of a personnel management system based on merit and the fair management of re-employment in the context of reforms of overall employment costs; it also provided for “a broad review of the public service system, including the fundamental labour rights of civil servants and the National Personnel Authority system, the way of setting salaries for civil servants” and treatment based on merit and performance evaluations, taking into account public awareness and progress in reforms of the existing salary system. Pursuant to this policy, government–labour consultations were held on three occasions between January and May 2006 and the two parties agreed that the best way to develop industrial relations and discuss the issue of fundamental labour rights of public service employees was to establish 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. At the first meeting of the committee held on 27 July 2006, it was agreed that a meeting would be held once a month to discuss: (a) the scope of public work for a simple and efficient government; (b) the proper classification structure and job descriptions for workers engaged in public work; and on the basis of these (c) the proper way of developing industrial relations, including the issue of fundamental labour rights of public employees.

The Committee also takes note of the information provided by the Government on this point, to the effect that until May 2007, the Special Examination Committee had held ten meetings until May 2007 and had approved a note by its chairperson according to which “the issue of labour–employer relations in the public sector, including the fundamental

labour rights of public employees, should be re-examined with an eye towards reform". Moreover, the Government submitted two bills to the Diet aimed, inter alia, at introducing an ability- and performance-based personnel management system for public employees at the national and local levels respectively. It also adopted a Cabinet Decision on civil service reform according to which the Government shall continue to examine the fundamental labour rights of public employees taking into consideration the discussions taking place at the Special Examination Committee and further exchanges of views with concerned parties such as employees' organizations.

*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 in order to find mutually acceptable solutions to these difficulties 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 takes note of the Government's report as well as its response to the comments made by: the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 10 August 2006; the Japanese Trade Union Confederation (JTUC–RENGO) dated 28 August 2006; and the Zentoitsu (All United) Workers' Union dated 13 December 2005, with regard to issues previously raised by the Committee including anti-union discrimination and the setting of wages in the public service. It also notes the communication by the ITUC dated 27 August 2007 with regard, inter alia, to difficulties in trade union organization and collective bargaining due to the increase in precarious forms of employment and subcontracting, including for migrant workers as well as the comments by JTUC–RENGO dated 13 October 2007. *The Committee requests the Government to provide its observations on the latest comments made by the ITUC and JTUC–RENGO.*

*Article 1 of the Convention.* The Committee notes that the comments of the Zentoitsu (All United) Workers' Union concern a 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 notes that in its report the Government indicates that it is not in a position to make comments on the final determination of this issue by the courts. The Committee also notes with interest from the latest communication by the ITUC that the 17-year dispute and trade union struggle ended in November 2006 with a final agreement which settled 61 outstanding court cases between the parties. The ITUC adds, however, that the last major issue, the reinstatement of the 1,047 Kohuao worker hold-outs, continues to be worked out. *The Committee requests the Government to communicate the relevant information in its next report and, in particular, the results of any appeals from the remaining workers or any other developments.*

*Article 4. 1. Collective bargaining rights of public service employees not engaged in the administration of the State in the context of the civil service reform.* 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 recalls that in the framework of that reform, the National Personnel Authority (NPA), a neutral body which makes recommendations to the Diet and the Government on the revision of remuneration and working conditions of public employees (based on surveys of working conditions in the private sector and taking into account the views of public employees' organizations), proposed on 15 August 2005, a drastic reform of the whole remuneration system of public employees so as to reflect local private sector wage levels and each employee's performance.

The Committee notes the comments made by JTUC–RENGO and the ICFTU to the effect that, on 24 December 2005, the Government adopted an "Essential Policy for Administrative Reform" which represented a major switch from the previous policy in that it provided for "frank dialogue and adjustment with the parties concerned" in order to achieve the implementation of a personnel management system based on merit and the fair management of re-employment in the context of reforms of overall employment costs; it also provided for "a broad review of the public service system, including the fundamental labour rights of civil servants and the National Personnel Authority system, the way of setting salaries for civil servants, treatment based on a merit system and performance evaluations, and the career system" taking into account public awareness and progress in reforms of the existing salary system. Based on this policy, a Special Examination Committee was created to examine, inter alia, the proper way of developing industrial relations, including the issue of fundamental labour rights of public employees. Despite this policy, however, according to JTUC–RENGO, during the 2006 revision of the remuneration levels of public employees, the NPA unilaterally modified the index on the basis of which wage levels of public employees are compared to those of the private sector, from one comprising 100 companies to one comprising 50 companies, following instructions from the Government. JTUC–RENGO recalls that the methodology for the evaluation of public employees' remuneration levels is based on an agreement between the

Government and trade union leaders dating back to 1964. The recent unilateral change is according to JTUC–RENGO evidence that the NPA system is not functioning effectively.

The Committee notes that, according to the Government, the NPA, which functions as a compensatory measure for the denial of the right to bargain collectively and to strike in the public sector, undertook, pursuant to a request by Cabinet, a review of the wage index for the determination of public employees' wage levels – an index which it had established on its own initiative in 1964. The revision took place pursuant to wide discussions in the framework of a conference organized by the NPA with the participation of experts from various fields, as well as interviews of personnel officials in each ministry and employees' organizations. After having heard the opinions of all sides, the NPA decided to replace the index from one based on 100 enterprises to one based on 50. Moreover, the NPA recommended in August 2006 that the reform of the remuneration structure, which had started in the fiscal year 2006, be promoted, based on the results of fact-finding surveys on the remuneration of public employees. The Government held a total of 39 official meetings with employees' organizations in 2006 with regard to issues including remuneration. Three of these meetings were held with the Minister of Internal Affairs and Communications. Based on these findings, amendments were adopted to the Law concerning the remuneration of regular service employees so as to revise the remuneration as recommended by the NPA.

***Taking note of this information, the Committee 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 is 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 able to report progress in this respect in its next report.***

2. *Negotiations in national medical institutions.* The Committee's previous comments concerned restrictions over collective bargaining introduced in the context of the transfer of 154 national hospitals and sanatoriums to the National Hospital Organization (NHO), an independent administrative agency, as of 1 April 2004. The Committee takes note of the information provided in the Government's report to the effect that in the 2004–06 period 268 collective bargaining sessions were held in hospitals (221 sessions between 197 hospitals and the respective branch officers of the All Japan National Medical Workers' Union, seven sessions between seven blocks of hospitals and trade union district councils and 40 sessions between the headquarters of the NHO and the All Japan National Medical Workers' Union). Among the items discussed were the promotion of annual leave, reduction of nurses' nightshifts, the bargaining process, etc. Agreements were reached in 396 cases. The Committee takes note of this information.

## Jordan

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1968)***

The Committee notes the Government's report. It further notes the comments submitted by the International Trade Union Confederation (ITUC), which principally refer to matters previously raised by the Committee as well as to the situation of migrant workers in export processing zones, who, according to the ITUC, are denied trade union rights and are subject to poor working conditions, threats of deportation and acts of violence. ***The Committee requests the Government to submit its observations thereon.***

1. *Scope of the Convention.* Previously, the Committee had taken note of the allegations made by the ITUC in 2006 concerning the denial of trade union rights to migrant workers, including in the export processing zones, and had also referred to certain classes of agricultural workers excluded from the provisions of the Labour Code. In this regard, the Committee notes the Government's statement that the Ministry of Labour has supported the efforts of the General Federation of Jordanian Trade Unions (GFJTU) to reach out to migrant workers by helping to establish migrant workers' committees in the export processing zones that are associated with GFJTU offices set up in those areas. The Government adds that it has also responded to allegations of poor treatment of migrant workers by, inter alia, increasing the number of labour inspectors and appointing staff to provide them with logistical support, placing complaints boxes in most factories and offices employing migrant workers, and announcing the beginning of hotline services in seven languages to field work-related complaints. As concerns legislative measures, the Government indicates that in consultation with the social partners it has formulated amendments to the Jordanian Labour Code, the purpose of which is to include migrant workers, domestic workers, and all categories of agricultural workers within the scope of the Labour Code's provisions. The Government further states that the draft amendments have been referred to the Council of Ministers, in order to begin the process of adopting the legislative and constitutional measures for their promulgation. The Committee notes this information with interest. ***It expresses the hope that the amendments to the Labour Code will, in the near future, ensure the guarantees of the Convention to the categories of workers mentioned and requests the Government to transmit a copy of the amendments to the Labour Code once they are adopted.***

2. *Article 2 of the Convention.* *Need to provide for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference.* The Committee had previously recalled that, to ensure that measures prohibiting acts of interference receive the necessary publicity and are effective in practice, the relevant legislation should explicitly lay down provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of

interference in order to guarantee the application in practice of *Article 2* of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 232). ***Noting that the Government provides no information respecting this matter, the Committee once again requests 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 and to keep it informed in this respect.***

## Kazakhstan

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

The Committee notes the Government's report.

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations.* In its previous observations, the Committee had requested the Government to indicate whether there were any regulations restricting trade union rights of non-citizens. The Committee notes the Government's statement that the Law on Trade Unions applies to foreign citizens, as well as to stateless persons living and working in Kazakhstan and that, by virtue of section 11 of the Law on Social Associations, all public associations, other than political parties, are allowed to open their membership to foreign citizens and stateless persons.

The Committee had further requested the Government to indicate whether there were any regulations restricting trade union rights of railway workers. The Committee notes the Government's indication that under the Law on Trade Unions, railway workers enjoy the same rights with regard to the establishment, operation and dissolution of their organizations as other trade union associations. The Government explains that workers of the railway sector are members of the Trade Union of Railway Workers of the Republic of Kazakhstan.

*Article 5. Right of organizations to establish federations and confederations and to affiliate with international organizations.* The Committee had previously noted the ban on financial assistance to national trade unions by an international organization (section 106 of the Civil Code and article 5(4) of the Constitution) and requested the Government to amend the legislation so as to lift this prohibition. The Committee notes the Government's indication that other than monetary, the financial assistance also includes such forms of support as property, equipment, motorized transport, communications, printing equipment, etc. The Government explains that the reason behind such a prohibition is dictated by the need to protect the constitutional structure, independence and territorial integrity of the State; and that trade unions, by their very nature, possess a well-organized solidarity and have the capacity to influence the public political view and the policy of the State in various areas of public life. The Government further indicates that in order to protect trade unions from external influence and to ensure their independence and self-sufficiency, the State may adopt a legislation to prohibit other assistance to trade unions from foreign entities. The Committee considers that legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers and that all national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers respectively, whether they are affiliated or not to the latter. ***The Committee therefore once again requests the Government to take steps to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift this prohibition and to keep it informed of the measures taken or envisaged in this respect.***

The Committee had previously requested the Government to clarify the meaning of article 5 of the Constitution and section 5(4) of the Law on Social Associations, which seemed to forbid the activities of international organizations within Kazakhstan, particularly in the light of section 9 of the Law on Social Associations, which provides that the subordinate structures (affiliates and representatives) of international and foreign non-commercial and non-governmental associations may form and operate in the Republic of Kazakhstan. The Committee notes the Government's indication that, while no foreign trade unions may operate in Kazakhstan, section 6 of the Law on Trade Unions entitles trade unions to cooperate with trade union organizations based abroad, join international trade union associations and organizations and conclude agreements.

Finally, the Committee notes the adoption, in May 2007, of the Labour Code. The Committee recalls that in its previous observations it had raised the following issues, which now seem to be covered by the new Code:

- the right to establish and join organizations of employees of law enforcement bodies and judges;
- the right to strike in civil service;
- the basis for determining the legality of strikes; and
- sanctions against strikes.

The Committee will examine these issues once the translation of the Labour Code becomes available.

***The Committee further once again requests the Government to provide its observations on the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation)***

dated 10 August 2006, alleging violations of trade union rights in practice, in particular, high registration cost, which makes registration of trade unions almost impossible and interference by employers in trade unions' internal affairs.

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

The Committee notes the Government's report.

*New Labour Code.* The Committee notes the adoption, in May 2007, of the Labour Code which seems to regulate the issues previously raised by the Committee. **The Committee will examine the conformity of the new Code with the Convention next year, once its translation becomes available.**

*Comments of the International Trade Union Confederation (ITUC).* The Committee regrets that the Government provides no reply to the previous comments of the ITUC, alleging violations of trade union rights in practice, in particular interference by employers in trade unions' internal affairs and activities, and refusals to bargain collectively. **The Committee requests the Government to institute an independent investigation into these allegations and to keep it informed in this respect.**

## **Liberia**

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

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

The Committee takes note of the comments of 10 August 2006 by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) on the application of the Convention referring to matters already raised by the Committee and to threats of arrest and prosecution by the police to civil servants who took part in a strike in 2005. **The Committee requests the Government to send its observations on these matters.**

For many years the Committee has been asking the Government to take the necessary steps to amend or repeal the following provisions, which are inconsistent with *Articles 2, 3, 5 and 10 of the Convention*:

- Decree No. 12 of 30 June 1980 prohibiting strikes;
- section 4601-A of the Labour Practices Law prohibiting agricultural workers from joining industrial workers' organizations;
- section 4102, subsections 10 and 11, of the Labour Practices Law providing for the supervision of trade union elections by the Labour Practices Review Board; and
- section 4506 of the Labour Practices Law prohibiting workers in state enterprises and the public service from establishing trade unions.

**The Committee notes a report of the judiciary and labour committees of the Senate on the passage of an act to repeal Decree No. 12 and requests the Government to furnish a copy of the repealing legislation with its next report.**

**Emphasizing the seriousness of these problems, the Committee expresses the firm hope that the Government will take all steps within its reach to repeal or amend these provisions of the Labour Practices Law in the near future in order to bring the legislation fully into conformity with the requirements of the Convention, and requests the Government to provide information in its next report on all measures adopted to this end.**

The Committee reminds the Government that the technical assistance of the Office is available should it so desire.

**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: 1962)**

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

The Committee takes note of the comments of 10 August 2006 by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) on the application of the Convention.

The Committee recalls that for many years, it has been commenting on the application of *Articles 1, 2 and 4 of the Convention* and, in particular, has asked the Government to take measures to ensure that:

- the legislation guarantees workers adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions;
- the legislation guarantees workers' organizations protection against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions; and
- employees in state-owned enterprises who are not public officials engaged in the administration of the State enjoy the right to collective bargaining.

**The Committee points out the seriousness of the problems it has raised and expresses the firm hope that the Government will take all measures within its reach to bring the law and practice fully into conformity with the requirements of the Convention, and asks the Government to provide information in its next report on all 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.*

## Malawi

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

The Committee notes the Government's report. It observes, however, that it does not reply to the points raised in its previous comments.

The Committee noted that the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) submitted comments that referred in particular to violent police repression of a protest march by tea sector workers as well as acts of violence against a trade union organizer. The Committee recalls that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed. *The Committee expresses the firm hope that the Government will take all the necessary measures to ensure that this kind of violent acts will not take place in future.*

The Committee had noted that sections 45(3) and 47(2) of the Labour Relations Act empower the parties concerned to apply to the Industrial Relations Court for a determination as to whether a particular strike involves an essential service. *The Committee once again requests the Government to provide information on any strike declared illegal and the reasons therefor, as well as on any decisions rendered by the Industrial Relations Court under sections 45(3) and 47(2) of the Labour Relations Act.*

A request concerning other points is being addressed directly to the Government.

## Malta

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

The Committee takes note of the Government's report. In its previous comments, the Committee had requested the Government, pursuant to comments by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 10 August 2006, alleging death threats against leaders of the General Workers Union (GWU), to conduct an inquiry into these allegations and to keep it informed of the result. *Noting that the Government's report does not contain any information in this regard, and that no further information has been provided by workers' organizations, the Committee requests the Government to indicate in its next report any measure taken to verify these allegations and take appropriate measures.*

*The Committee also once again requests the Government to send its observations on the comments made by the ICFTU in 2006 with regard to suspensions of strikers, freezing of union assets and suits filed against unions following industrial action.*

*Article 3 of the Convention.* In its previous comments, the Committee had requested the Government to clarify whether sections 74 and 75 of the Employment and Industrial Relations Act 2002, continue to impose compulsory arbitration over disputes of interest – just like the repealed Industrial Relations Act, 1976 – or whether the jurisdiction of the industrial tribunal (under section 75(1) of the Act) is now limited to disputes of rights only. 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 that the Government's report does not contain any information on these points.

The Committee notes the Government's reply to the request previously addressed to it with regard to the resolution of eight strikes held in 2003, to the effect that all of them were resolved through mediation by the authorities and not through recourse to the Industrial Tribunal.

The Committee recalls once again that restrictions on strike action through a compulsory arbitration procedure seriously limit the means available to trade unions to further and defend the interests of their members and are acceptable only in cases of essential services in the strict sense of the term, or public employees exercising authority in the name of the State, and at the request of both parties. *The Committee once again asks the Government to clarify whether the Industrial Tribunal's jurisdiction is limited to questions arising from disputes of right, or whether it is also entitled to hear disputes of interest and issue binding decisions thereon and, if so, to take the necessary measures to amend sections 74 and 75 of the Employment and Industrial Relations Act 2002, so as to ensure that compulsory arbitration may be imposed only in cases of essential services in the strict sense of the term and public employees exercising authority in the name of the State.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)**

The Committee notes the Government's report.

*Article 1 of the Convention.* In its previous comments, the Committee had requested the Government to clarify the procedures for the examination of allegations of anti-union dismissals by public officers, port workers and public transport workers given that these categories of workers are excluded from the jurisdiction of the industrial tribunal pursuant to section 75(1) of the Employment and Industrial Relations Act 2002 (EIRA). **Noting with regret that the Government's report does not provide information in this regard, the Committee once again requests 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.**

*Articles 2 and 3. Protection against acts of interference.* In its previous comments, the Committee had observed that the EIRA did not expressly protect employers' and workers' organizations from acts of interference by one another, nor did it provide for a rapid and effective appeals procedure or sanctions in the case of breach as is required to ensure compatibility with the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 232). While noting the Government's indication that section 2 of the EIRA includes in the definition of "trade dispute" a dispute between "employers and workers" and "workers and workers", so that, if an act of interference is alleged, any one of the parties can refer the matter to the industrial tribunal, the Committee notes that there is no explicit prohibition of acts of interference in the EIRA. **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.* In its previous comments, the Committee took note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2447 with regard to the need to amend 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, paragraph 752). **Noting that the Government's report does not contain any information in this regard, the Committee once again requests the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act.**

In its previous comments, the Committee had requested the Government to indicate whether collective bargaining with trade unions representing less than 50 per cent of employees is possible, at least on behalf of their own members. The Committee takes due note of the Government's report according to which nothing in the law precludes employers from negotiating with unions representing less than 50 per cent of employees.

In its previous observations, the Committee had noted with concern that section 74 of the EIRA entitles the Minister to refer an unresolved trade dispute to the industrial tribunal at the request of one party and that the industrial tribunal's decision in this matter will be binding. The Committee had also noted that, pursuant to section 80 of the EIRA, in its capacity to decide trade disputes, the industrial tribunal is obliged to take into consideration the Government's social and economic policies and plans. **The Committee recalls that, except in the case of public servants engaged in the administration of the State or essential services in the strict sense of the term, it is generally contrary to the principle of the voluntary negotiation of collective agreements established in the Convention, and thus the autonomy of the bargaining parties, for binding arbitration to be imposed by the authorities at the request of one party (see General Survey, op. cit., paragraph 257).** The Committee addresses a request to the Government on this point under Convention No. 87.

## Republic of Moldova

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)**

The Committee notes the Government's report as well as the Government's reply to the comments made by the Confederation of Trade Unions of the Republic of Moldova (CRSM).

*Articles 1 and 2 of the Convention. Sanctions against acts of anti-union discrimination and acts of interference.* The Committee notes that the Government points to article 20 of the Constitution and to article 38 of the Law on Trade Unions according to which a trade union organization claiming violations of its legal rights can submit an application to the juridical instance which will express itself on the causes of the dispute by a motivated decision. The violation of trade union rights is sanctioned under article 41 of the Code on Administrative Contraventions (CAC) which provides for application of fines in the amount up to 250 units, which equals 5,000 MDL (section 26 of the CAC).

The Committee notes that the Government refers to the comments of the CRSM according to which section 41 of the CAC does not describe in sufficiently specific terms the illegal actions that constitute obstructions of trade union activities. The Government points out that the Ministry of the Economy and Trade elaborated a draft law which sought the introduction of a new contravention into the CAC providing for the application of a fine in the amount from 75 to 200 conventional units for *obstruction of lawful activities of trade unions and their bodies by high-level civil servants.* The

Government reports that it was, ultimately, decided to stop promoting the draft law in question, and suggested to Parliament to incorporate its content into the draft of the new Code on Contraventions which is currently being discussed in Parliament.

*The Committee hopes that specific legislative provisions providing for effective and sufficiently dissuasive sanctions (civil, administrative or penal) in cases of anti-union discrimination and acts of interference will be adopted in the near future and requests the Government to keep it informed of new developments in this respect and to ensure that these sanctions are applied through effective and expeditious procedures.*

*Article 4. Compulsory arbitration.* The Committee recalls that its previous comments concerned section 360(1) of the Labour Code according to which, if the parties to the collective labour dispute have not reached an agreement or disagree with the decision of the reconciliation commission, either party has the right to submit an application to settle the conflict in the judicial tribunals.

The Committee notes that the Government refers to an amendment under consideration which would exclude the obligation to examine collective labour conflicts within the conciliation commission before addressing the judicial instance. The Committee considers, however, that this amendment maintains the possibility of one of the parties submitting the dispute to the judicial instances.

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 established in the Convention and thus the autonomy of the bargaining partners. Recourse to compulsory arbitration in cases where the parties do not reach an agreement through collective bargaining should be permissible only in the context of essential services in the strict sense of the term (i.e. services, the interruption of which, would endanger the life, safety or health of the whole or part of the population) or for public servants engaged in the administration of the State. *The Committee again requests the Government to take the necessary measures to amend the legislation so as to ensure that referral of the dispute to the judicial tribunals is possible only upon request by both parties to the dispute, in the context of essential services in the strict sense of the term and for public servants engaged in the administration of the State.*

## Myanmar

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1955)**

The Committee notes the Government's report, including its reply to some of the comments previously made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in a communication dated 12 July 2006.

The Committee notes the conclusions and recommendations reached by the Committee on Freedom of Association in its interim report concerning Case No. 2268 (340th Report, paragraphs 1064–1112) and in particular observes that it requested the Government to institute an independent inquiry into the alleged murder of a trade unionist, Saw Mya Than, and to release Myo Aung Thant from prison. The Committee notes that the Government's observations on these matters refer to its previous communications.

The Committee also notes the comments of the ITUC dated 27 August 2007 on grave matters which arose in the course of 2006, in addition to issues that have already been raised by the Committee over the years, including the current situation of an obscure legislative framework; a single trade union system; military orders and decrees further limiting freedom of association; the prohibition of trade unions; "workers' committees" organized by the authorities; the Federation of Trade Unions of Burma (FTUB) forced to work underground and accused of terrorism; and the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers' Union of Burma (SUB):

- The arrest by the military authorities on 8 and 9 August 2006 of eight members of the family of the FTUB member and activist Thein Win at their house in the Kyun Tharyar section of Pegu city as well as ten alleged associates of Thein Win including the village head and other elders. While his mother and one of his sisters were released after one day, the others were sent to Toungoo prison and intensively interrogated under torture by military intelligence and special branch officers about the activities of Thein Win including an alleged trip he made to Pegu to organize activities around May Day. While being held at Toungoo the family members were ordered by their interrogators to sign "confessions" about Thein Win's activities and most of them were forced to do so under torture. On 3 and 4 September 2006, the authorities released most of the family members and friends. Most were however subsequently visited and threatened by military intelligence officers who demanded that each prisoner pay 1 million kyats into an army fund. Three of Thein Win's siblings (Tin Oo, Kyi Thein and Chaw Su Hlaing) were still being detained at the end of the year charged with violations of section 17(1) and (2) of the Unlawful Associations Act.
- 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).

- Intimidation by the army of the 934 workers at Hae Wae Garment, located in South Okkapala Township in Rangoon, 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. A detachment of 12–20 police officers were regularly present in the factory after workers returned to work.
- 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 Committee further recalls the grave information previously communicated by the ICFTU to which the Government has not provided any new information:

- The arrest, torture and killing of Saw Thoo Di, a.k.a. 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.
- The shelling of the Pha village with mortars and rocket propelled grenades by Light Infantry Battalion 308 which had been sent by the State Peace and Development Council (SPDC) military upon learning that, on 30 April, the FTUB and Federation of Trade Unions – Kawthoolei (FTUK) were preparing a May Day workers' rights commemoration.
- The discovery in early June 2005, by the SPDC of an underground network of ten FTUB organizers in the Pegu area who were providing support and education to workers and serving as a networking and information link to FTUB structures abroad. Seven men and three women were arrested. In a press conference held on 28 August, the SPDC leaders accused the organizers of having used satellite phones to convey information from inside Burma to the FTUB, which then provided information to the ILO and the international trade union movement. The arrested FTUB members were taken to the infamous Aug Tha Pay interrogation centre in Mayangone district of Rangoon where they were investigated and tortured by special branch police and the Bureau of Special Operations (military intelligence) personnel during the months of June and July. On 29 July, they were transferred to Insein prison, and their case sent to a special court that conducts its hearings inside the prison. During the secret trial, they were denied access to outside counsel or witnesses, and the proceedings clearly did not meet international judicial standards. They were all found guilty and were sentenced on 10 October. Wai Lin and Win Myint, as key leaders of the network, respectively received sentences of 25 years and 18 years; the other five men and two of the women (Hla Myint Than, Major Win Myint, Ye Myint, Thein Lwin Oo, Aung Myint Thein, Aye Chan, Kin Kyi), each received seven-year jail terms, and bank clerk Ma Aye Thin Khine was sentenced to three years of imprisonment. In its communication of 27 August 2007, the ITUC adds that, at the end of 2006, all these FTUB members were still being detained in Insein prison. There were significant concerns about the health of retired army Major Myint Lwin, aged 77, who had been sentenced to seven years.
- Thet Naing, another underground FTUB leader, was released from Myitkyina prison in November 2004 after serving a seven-year sentence following his rearrest for his role in leading a workers' protest in the Yam Ze Kyang garment factory. He continues to be affected by nerve damage suffered from the torture he was subjected to during his interrogation and the mistreatment he received while in jail. He has now left the country and joined the FTUB abroad.

The Committee takes note of the information provided by the Government with regard to some of the other allegations made by the ICFTU in 2006:

- The police arrest on 17 April 2005 of four workers (Hlae Hlae Khaing, Zin Min Khing, Moe Thi and Mar Mar) following a strike at a garment factory in Hlaingthayar industrial zone, and their imprisonment in Rangoon for allegedly having broken the law through their actions connected with the factory (released on 2 May after mobilization of the other workers in the factory which was suppressed by the army). The Government indicates that the mobilization was due to claims that the annual bonus be paid on a monthly basis and was resolved through negotiations and conciliation.
- The death on 3 November 2005, of FTUB organizer Aung Myint (see above) under mysterious circumstances in his cell at Insein prison. According to the ICFTU, the authorities told the family that he died of dysentery, but refused to turn over the body to his relatives for a funeral, making it impossible to ascertain whether he died from abusive treatment, disease or other cause. Police officials cremated the body themselves. The Government indicates that he was suffering from tuberculosis and had received treatment in the prison hospital as well as the Insein Public Hospital and then, at the patient's request, back to the prison hospital where he died on 6 November 2005. Because his relatives had difficulties to arrange for a funeral, the authorities, in consultation with the relatives, cremated the body.

- The arrest of Myo Aung Thant, a member of the All Burma Petro-Chemical Corporation Union in 1997, and his being charged at the time with high treason for maintaining contacts with the FTUB. According to the ICFTU, now the SPDC, has explained that he was jailed for ten years for high treason under section 122(1) of the Penal Code, plus seven years for violations of the Emergency Provisions Act, plus three years for violating the Unlawful Associations Act. Myo Aung Thant is detained in a remote part of the country at Myitkyina prison in Kachin State, and was, according to his family, in the course of 2005 held in solitary confinement in a small, windowless cell. The Government indicates that the cell is 10 by 10 feet, the main door is 7 by 2.5 feet and the bed is 6 by 4 feet. He received a medical check-up and it was found that he was suffering from the disease of piles. He was sent to the Myitkyina General Hospital for operation. His relatives (mother, son, sister and niece) were able to see him seven times.

***The Committee regrets the paucity of the information provided by the Government in reply to the large number of extremely grave allegations most of which have remained without reply. The Committee urges the Government to provide detailed observations on all the above allegations, in its next report.***

***The Committee once again most strongly deplores the recent and serious alleged acts of arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of their trade union activities, including the mere sending of information to the FTUB.*** The Committee recalls once again that respect for civil liberties is essential for the exercise of freedom of association and that 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 and that a climate of violence, in which murders and disappearances of trade union leaders go unpunished, constitutes an extremely serious obstacle to the exercise of trade union rights and that such acts require severe measures to be taken by the authorities. The authorities should not seize on legitimate trade union activities as a pretext for arbitrary arrest or detention. Furthermore, as regards more specifically, torture, cruelty and ill-treatment, the Committee 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, paragraphs 29–30). ***The Committee therefore urges, once again, 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 release 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. The Committee firmly hopes that the Government will soon be in a position to indicate progress in this respect.***

Concerning the legislative framework (*Articles 2, 3, 5 and 6 of the Convention*), the Committee recalls that it had noted in its previous observation a total lack of progress towards establishing a legislative framework under which free and independent workers' organizations could be established. In particular, the Committee had regretted the long delay in the adoption of the Constitution, and the lack of participation in this process 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 for nearly 20 years. Furthermore, the Committee 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; and (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).

The Committee notes the Government's indications that: (i) the National Convention delegates successfully completed the drawing up of the fundamental principles and detailed basic principles for the drawing up of the Constitution; (ii) work has started at the basic level, especially in the Yangon Division, under the supervision of the Supervisory Committee of the Industrial Zone, towards the creation of the new trade union and that 11 basic workers' organizations have been formed at the industrial zones in Yangon Division and more will be formed in the remaining industrial zones of Myanmar; and (iii) workers can bargain with their employers on their working conditions under the existing labour laws, either individually or collectively; such bargaining took place in 80 factories and workplaces in 2006 and 140 factories and workplaces up to September 2007; all these could be settled by the representatives of the Government, employers and workers through conciliation and negotiation.

While noting the Government's indications, the Committee must, however, recall once again the long delay in the adoption of the Constitution and the fact that, in the meantime, no progress has been made on the particularly serious and

urgent issues it has been raising for nearly 20 years now. It must also express serious doubts as to whether the organizations and negotiations referred to by the Government actually reflect the free choice and interests of workers in a situation as described above, void of any legislative protection for the exercise of meaningful freedom of association.

*The Committee once again urges the Government to furnish without delay a detailed report on the concrete measures taken 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, as well as the Unlawful Association Act, so that they cannot be applied in a manner that would infringe upon the rights of workers' and employers' organizations. It requests the Government to communicate any steps taken towards the adoption of the Constitution and provide the text of the fundamental principles for the drawing up of the Constitution as well as any further relevant draft laws, orders or instructions made to guarantee freedom of association so that it may examine their conformity with the provisions of the Convention. Finally, the Committee requests the Government to indicate the manner in which the elements of civil society were involved in the adoption of the fundamental principles.*

## Pakistan

### **Right of Association (Agriculture) Convention, 1921 (No. 11)** (ratification: 1923)

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

The Committee notes the comments submitted by the Pakistan Workers Federation in a communication dated 2 May 2007 indicating that agricultural workers have been 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 observations, the Committee noted that while agriculture is not expressly excluded from the Industrial Relations Ordinance (IRO) 1969, it is not expressly covered and the definitions given in the Ordinance can be interpreted as excluding small agricultural workers like self-employed farmers, sharecroppers, tenants and smallholders, from its application.

The Committee notes that the IRO 1969 has been replaced by the IRO 2002. In this regard, the Committee notes that according to section 1(4), the IRO 2002 shall apply to all persons employed in any establishment or group of establishments or industry. According to section 3(1)(a) IRO 2002 the right to establish a trade union is granted to those employed in an establishment or industry; section 2(xi) defines establishment as "any office, firm, factory, society, undertaking, company, shop, premises or enterprise which employs workmen directly or through a contractor for the purposes of carrying on any business or industry and includes all its departments and branches". Industry is defined as "any business, trade, manufacture, calling, service, occupation or employment engaged in an organized economic activity of producing goods or services for sale, excluding those set up exclusively for charitable purposes" (section 2(xvii) IRO 2002). Moreover, according to section 2(x) IRO 2002, the term "employer" means any person or body of persons, whether incorporated or not, who or which employ workmen in an establishment under a contract of employment. The Committee therefore observes that although the IRO 1969 has been replaced by the IRO 2002, small agricultural holdings which do not run an establishment or farmers working on their own or with their family still appear to be excluded from the provisions on freedom of association.

*Under these circumstances, the Committee once again requests the Government to provide in its next report detailed information concerning legislative and other measures taken or contemplated to ensure specifically that those engaged in agriculture, that 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.*

## Panama

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** (ratification: 1958)

The Committee notes the Government's report.

The Committee recalls that its previous comments concerned the following issues:

- (a) the authority of the Regional or General Labour Directorate to refer labour disputes to compulsory arbitration in order to stop a strike in a public service enterprise, including when the service cannot be considered essential in the strict sense of the term, such as transport (sections 486 and 452 of the Labour Code);

- (b) sections 174 and 178, last paragraph, of Act No. 9 (“establishing and regulating administrative careers”) of 1994, which lay down respectively that there shall 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;
- (c) section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code), which requires too large a membership (ten) for the establishment of an employers’ organization and an even larger membership (40) for the establishment of a workers’ organization at the enterprise level;
- (d) article 64 of the Constitution, which requires Panamanian nationality in order to serve on the executive board of a trade union;
- (e) the obligation to provide minimum services with 50 per cent of the personnel in establishments which provide essential public services, which go beyond essential services in the strict sense of the term and include transport, and the penalty of summary dismissal of public servants for failure to comply with the requirement concerning minimum services in the event of a strike (sections 152(14) and 185 of Act No. 9 of 1994);
- (f) legislation interfering with the activities of employers’ and workers’ organizations (sections 452(2), 493(1) and 497 of the Labour Code) (closing of the enterprise in the event of a strike and compulsory arbitration at the request of one of the parties). The Government provided the technical assistance mission with a copy of Executive Decree No. 32 of 1994, providing for minimum services to safeguard the security of the enterprise and its assets, and the maintenance of services. ***The Committee requests the employers’ confederation, which raised this issue, to provide its comments in this regard;***
- (g) the requirement of a high number (50) of public servants to establish an organization of public servants under the Act respecting administrative careers. The Government acknowledged previously that the number is high, but pointed out that section 176 of Act No. 9 allows public servants to organize by class (category) or sector of activity, and the Committee asked the Government to take steps to amend the legislation with a view to reducing the minimum number of public servants required to establish organizations;
- (h) denial of the right to strike of workers engaged at sea and on inland waterways (Act No. 8 of 1998), and in export processing zones (Act No. 25);
- (i) prohibition for federations and confederations to call strikes (prohibition of strikes protesting against problems relating to economic and social policy, while strikes not related to a collective agreement in an enterprise are unlawful). The Committee emphasized that federations and confederations should have the right to strike and 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 of 1994 on freedom of association and collective bargaining, paragraph 165). The Committee requested the Government to take steps to amend the legislation with a view to bringing it into line with these principles;
- (j) disaffiliation of the National Federation of Associations and Organizations of Public Servants (FENASEP) from a trade union confederation by decision of the authorities. The Government indicated previously that public servants are governed by the Act respecting administrative careers and considered that they must join homologous organizations of public servants. The Committee pointed out that, although first-level organizations of public servants may be restricted to this category of workers, such organizations should, however, be free to join federations and confederations of their own choosing, including those which also group together organizations from the private sector (see General Survey, op. cit., paragraph 193). The Committee requested the Government to take measures to amend the legislation with a view to bringing it into line with the above principle. The Committee requested the Government not to prevent the affiliation of the FENASEP;
- (k) denial to public servants of the right to establish unions. The Government indicated previously that interpretation by the National Council of Organized Workers (CONATO) was inconsistent with reality; the right of association of public servants is recognized in Act No. 9 of 20 June 1994 and, in practice, FENASEP operates in the same way as any other private sector organization and participates in CONATO and the International Labour Conference. The Committee notes that FENASEP indicated to the technical assistance mission that it was negotiating with the Government the draft text partially reforming the Act respecting administrative careers;
- (l) 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 prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State [see General Survey, op. cit., paragraph 158];
- (m) denial of the right to strike in enterprises which have been in existence for less than two years under the terms of Act No. 8 of 1981. CONATO indicated that section 12 of the Act provides that no enterprise shall be compelled to conclude collective agreements during the first two years of operation and that the general legislation permits strikes only in pursuance of collective bargaining or in other limited cases. ***The Committee notes that the Government does not refer to this issue in its report and requests it to provide its comments on this matter;***

- (n) the need for the support of the majority of the workers in the enterprise, shop or establishment to call a strike (section 476(2) of the Labour Code). The Government indicated previously that it considered the restriction to be justified by the effects produced by strikes under the national legislation (closure of the enterprise, prohibition upon the conclusion of new employment contracts, etc.). The Committee takes due note that the Government and the social partners indicated to the mission that if the above percentage is not obtained, at the third meeting of the union assembly, the requirement is for a simple majority of voting members.

The Committee notes the Government's statements in its report in which it repeats that it has shown its willingness to bring national law and practice into conformity with Conventions Nos 87 and 98, but that in order to do so it is necessary to amend the Labour Code, which in turn requires tripartite consensus. However, such consensus does not exist since, as the ILO technical assistance mission (February 2006) observed, there are significant differences between the social partners. The Government expressed the view that in light of the sensitivity of the subjects (right to organize, strikes, etc.), any reform has to be undertaken with tripartite consensus so that social peace is not endangered.

With reference to the specific points and requests for information, the Committee notes that the Government has provided the ruling of the Supreme Court which implicitly recognizes the right to collective bargaining and to strike of shipowners and organizations of seafarers, and which finds that section 75 of Legislative Decree No. 8 of 1998 infringes articles 64 and 65 of the Constitution. The Committee notes this ruling with satisfaction. It also notes with satisfaction that the FENASEP has been able to affiliate to the Workers' Central Organization (a previous government had cancelled the affiliation of the FENASEP to a trade union federation which included private sector workers, in which case the Committee had requested guarantees of the right to trade union affiliation).

The Committee notes that the Government has provided the text of the draft reform of the Act respecting administrative careers and notes with interest that it guarantees the right of association and the other rights envisaged in the Convention, and that it establishes protection against acts of anti-union discrimination and interference and recognizes the right to collective bargaining. *Nevertheless, as the Act provides that "there shall not be more than one association in an institution", the Committee requests the Government to take measures to amend this provision so as to guarantee the application of Article 2 of the Convention, which sets out the right of workers to establish organizations of their own choosing; the exercise of this right could also be facilitated by reducing the minimum number of members or founders, which is set at 40 in the draft text (the Government nevertheless indicates that FENASEP is opposed to this measure).*

The Committee notes that the Government has provided the text of Act No. 25 respecting export processing zones and recalls that it noted previously that a World Trade Zones Bill, which referred to the relevant provisions of the Labour Code for all matters relating to relations between workers and employers, would replace the above Act. *The Committee understands that at present there is no right to collective bargaining or to strike in export processing zones, and accordingly maintains its previous comments on this subject.*

The Committee regrets that the Government has not referred to certain legal provisions identified by the technical assistance mission in 2006 which could be amended as neither the Government nor the social partners were opposed to such amendment. These concern in particular the following: (1) reducing to four the number of employers needed to establish an employers' organization; (2) removing the restriction on the free affiliation of associations of public servants to other trade union organizations, particularly those of a higher level which group together public servants and other workers; and (3) the possibility for associations of public servants to have more than one chapter (section) per province.

The Committee regrets to note that the discrepancies referred to above between the law and practice and the Convention have existed for many years, and that some of the restrictions referred to are serious. *The Committee requests the Government to fulfil its commitments to the technical assistance mission of 2006 in terms of holding meetings with the social partners in the form of seminars or workshops with the ILO's support and to actively promote tripartite dialogue on all pending issues. The Committee hopes that in the near future it will be in a position to note improvements in the legislation and requests the Government to keep it informed in this regard and, in accordance with the assurances given to the technical assistance mission, to ensure that any proposals to reform the trade union legislation are not used to regulate or include other issues.*

The Committee notes with interest a new law of 2 July 2007, just transmitted by the Government, which grants public servants the right to establish and join trade unions and to engage in collective bargaining. The Committee understands that the new law provides for protection against acts of anti-union discrimination. The Committee will examine the new legislation fully at its next session.

## Papua New Guinea

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

The Committee takes note of the information contained in the Government's report. It notes in particular the third draft Industrial Relations Bill, which was last revised on 14 August 2006 following widespread consultations with the social partners, has entered its third phase, and incorporates some technical inputs provided by the ILO. The said Bill

replaces the draft Industrial Relations Act of 2003 as part of an ongoing effort, commenced in 2003, to review and consolidate the labour legislation. To this end, section 257 of the current Bill repeals the Industrial Organizations Act, the Industrial Relations Act, the Industrial Relations (Amendment) Act of 1992, the Industrial Relations (Amendment) Act of 1998, the Public Service Conciliation and Arbitration Act, and the Teaching Service Conciliation and Arbitration Act.

*Power of the minister to assess collective agreements on grounds of public interest.* Previously, the Committee had requested the Government to amend section 32 of the draft Industrial Relations Act of 2003, which confers a broad power on the Minister of Labour to assess collective agreements on grounds of public interest – a principle that also applied to the public sector. The draft legislation had stated that “The minister may, on behalf of the State, appeal as of right against the making of an award or order (including an award or order made by consent) or the certification of an agreement, on the ground that the making of the award or order, or the certification of the agreement, is contrary to public interest”. In this respect, the Committee notes that this provision has been retained in the most recent draft legislation – as section 32(1) of the third draft Industrial Relations Bill. ***Noting the Government’s indication that section 32 of the draft Bill has been highlighted for further review in January 2007, and that further improvements are needed to ensure the legislation’s compatibility with the Convention, the Committee recalls once again that such legislative provisions will only be compatible with the Convention if they merely stipulate that approval of collective agreements may be refused if the collective agreement has a procedural flaw, or does not conform to the minimum standards laid down by general labour legislation, and requests the Government to take measures to ensure that section 32(1) of the third draft Industrial Relations Bill is in conformity with this principle. The Committee reiterates its hope that the technical assistance currently being provided by the ILO would contribute to the resolution of this matter.***

*Compulsory arbitration.* The Committee had previously noted that the previous draft industrial relations legislation appeared to institute a system of compulsory arbitration when conciliation between the parties failed. The Committee notes in this regard that sections 151 and 152 of the previous draft Industrial Relations Act – which appeared to grant the commissioner the authority to commence compulsory arbitration proceedings where the power to initiate conciliation proceedings had not previously been exercised – have been retained as sections 151 and 152 of the third draft Industrial Relations Bill. In this connection, the Committee notes with regret the Government’s indication that it has opted to retain the same approach and system of compulsory arbitration, without significant changes from the previous draft legislation. The Committee also notes, nevertheless, that in its 2007 report to the Committee on the application of Convention No. 87, the Government had indicated that the sections concerning dispute settlement in the third draft Industrial Relations Bill would be subject to further deliberation at the National Tripartite Consultative Council meeting in early 2007, following which amendments would be drafted by an interim national consultant. ***In these circumstances, the Committee requests the Government to amend sections 151 and 152 of the third draft Industrial Relations Bill, so as to ensure that compulsory arbitration may only be possible for public servants engaged in the administration of the State or in the framework of essential services in the strict sense of the term.***

***The Committee expresses its hope that its comments will be fully taken into account in the finalization of the third draft Industrial Relations Bill and asks the Government to transmit a copy of the said legislation once it is adopted.***

## Philippines

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)***

The Committee takes note of the Government’s report including the text of the Act to Secure the State and Protect Our People from Terrorism (No. 9371). It also notes the discussion that took place at the Conference Committee on the Application of Standards in June 2007. Furthermore, the Committee takes note of the interim conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2528 which concerns allegations of killings, grave threats, continuous harassment and intimidation and other forms of violence inflicted on trade unionists. The Committee further notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 27 August 2007 with regard to numerous violations of trade union rights in 2006, including killings, attempted murders, abductions, disappearances, assaults, torture, military intervention in trade union activities, violent police dispersion of International Women’s Day marches, and arrests of trade union leaders in connection with their activities. ***The Committee requests the Government to send its observations without delay on these very grave and serious allegations as well as on the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC) in 2006 with regard to the murder of four trade union leaders in 2005, anti-union violence in the sugar sector, death threats to discourage union formation in the economic zone in Cavite, and the non-arrest of the authors of the killings of seven strikers in November 2004.***

A. *Civil liberties.* The Committee notes that in its conclusions, the Conference Committee expressed deep concern at the allegations of the murders of trade unionists, and emphasized that respect for basic civil liberties is essential for the exercise of freedom of association. While noting the initial steps taken by the Government to address this serious situation through the establishment of the Melo Commission and the subsequent creation of special regional tribunals, the Conference Committee, concerned at the absence of judgements against the perpetrators and instigators of these crimes, stressed the importance of ensuring that all instances of violence against trade union members are properly investigated

and that any evidence of impunity is firmly combated to ensure the full and free exercise of trade union rights and their accompanying civil liberties. The Conference Committee urged the Government to ensure that all necessary measures are taken, including through the creation of independent and impartial investigations, so as to restore a climate of complete freedom and security from violence and threats thus enabling workers and employers to fully exercise their freedom of association rights.

The Committee notes that the Government indicates in its report that it is relentless and unceasing in its efforts to immediately solve the problem of killings generally and the alleged murder and enforced disappearance of trade unionists. The judiciary, through the Supreme Court, had in fact actively participated in these efforts. The Supreme Court had recently hosted a multi-sector National Summit on Killings and its second immediate concrete contribution – after previously designating special courts to try cases of killings – was the ongoing review of the rules of court to further enhance the protection of constitutional rights in response to the alleged murders and enforced disappearances of activists, trade unionists included. The Task Force Usig of the Philippine National Police (PNP) on the other hand, was continuously pursuing the investigation of the alleged cases and the eventual prosecution of the perpetrators. The Government is approaching the problem at all levels – investigation, prosecution, trial and possible conviction – within the context of the recommendation of the Melo Commission. The Government expresses optimism that definite results shall soon come out from all these efforts.

The Committee emphasizes that workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security from violence and threats. Furthermore, the Committee stresses the importance of ensuring that all instances of violence against trade union members, whether these be murders, disappearances or threats, are properly investigated so as to avoid the emergence of a climate of impunity preventing the free exercise of trade union rights. ***The Committee requests the Government to indicate in its next report further measures taken or contemplated with a view to the prompt investigation, prosecution, trial and conviction of those found guilty of murders and other violations against trade unionists.***

B. *Legislative issues.* With regard to the other matters raised by the Committee in its previous comments, the Committee notes that in its conclusion, the Conference Committee noted with interest the information provided by the Government on certain recently adopted amendments to the Labor Code, and urged the Government to take measures to ensure, in full consultation with the social partners concerned, that further amendments are adopted in the very near future taking into account the comments made by the Committee of Experts for many years. The Committee notes that the Government's latest report is confined to stating that the concern on the adoption of legislative measures shall be addressed by Congress whose session had just opened in the latter part of July 2007.

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing.* 1. In previous comments, the Committee had requested the Government to consider amending section 234(c) of the Labor Code, which requires, for registration of a trade union organization, the names of all its members comprising at least 20 per cent of all employees in a bargaining unit where it seeks to operate. The Committee notes the statement of the Government representative before the Conference Committee, according to which, an Act had been adopted in May 2007 which sought to expand the capacity of legitimate federations and national unions to organize and to help their local chapters acquire representation status for the purposes of collective bargaining. Any legitimate labour federation or national union could now create a local chapter which could in turn file a petition for the certification of an election without the minimum 20 per cent membership and without revealing the names of the officers and members of the local chapter. However, the 20 per cent membership requirement was still relevant in the case of unions seeking independent registration. The Committee understands from this statement that Senate Bill No. 1049, to which the Government had referred in previous reports, has been adopted. ***The Committee requests the Government to communicate the text of the relevant Act and to indicate in its next report measures taken or contemplated with a view to lowering the minimum membership requirement for registration of independent trade unions.***

2. The Committee had previously requested the Government to amend sections 269 and 272(b) of the Labor Code, so as to grant the right to organize to all nationals lawfully residing within the Philippines (and not just those with valid permits if the same rights are guaranteed to Filipino workers in the country of the alien workers, or if the country in question has ratified either ILO Convention No. 87 or ILO Convention No. 98). The Committee notes that the statement of the Government representative to the Conference Committee does not provide any new information in this regard and recalls once again that *Article 2* of the Convention provides for the right of all workers, without distinction whatsoever, to establish and join organizations. ***The Committee therefore once again requests the Government to provide information in its next report on measures taken or contemplated so as to amend the above-noted sections in a manner which enables anyone legally residing in the country to benefit from the trade union rights provided by the Convention.***

*Articles 3 and 5.* The Committee recalls that in previous comments it had requested the Government to:

- amend section 263(g) of the Labor Code so as to limit governmental intervention resulting in compulsory arbitration to the essential services only;
- amend sections 264(a) and 272(a) of the Labor Code, which provide for dismissal of trade union officers and penal liability to a maximum prison sentence of three years for participation in illegal strikes, so as to ensure that workers may effectively exercise their right to strike without the risk of being sanctioned in a disproportionate manner;

- lower the excessively high requirement of ten union members for federations or national unions set out in section 237(a) of the Labor Code, in order to ensure compliance with *Article 5* of the Convention;
- amend section 270, which subjects the receipt of foreign assistance to trade unions to the prior permission of the Secretary of Labor, so as to ensure compliance with *Article 5* of the Convention.

The Committee notes that in previous reports, the Government had referred to Senate Bill No. 1049 (formerly Senate Bill No. 2576), entitled “An Act Establishing the New Labor Code of the Philippines and for Other Purposes”, pending before both the Committee on Labor, Employment and Human Resources Development and the Committee on Constitutional Amendments, Revision of Code and Laws, and that the statement of the Government representative to the Conference Committee does not provide any new information in this regard. ***Recalling that it has been commenting on these provisions for a number of years, the Committee once again requests the Government to indicate in its next report the measures taken or contemplated with a view to amending the aforementioned legislative provisions so as to bring them into full conformity with the Convention.***

The Committee notes the information provided by the Government representative to the Conference Committee with regard to the exercise of the right to organize in export processing zones (EPZs), to the effect that trade unions in these zones have increased from 251 in 2000 to 341 as of September 2005 with a membership increase from 23,000 in 2000 to nearly 34,000 in 2005. ***The Committee requests the Government to continue to provide information in its next report on unionization levels in the EPZs.***

***Finally, recalling that the Conference Committee had requested the Government to accept a high-level ILO mission in respect of the serious matters raised relating to the purview of the Convention, the Committee trusts that this mission will take place in the very near future and that it will be able to assist the Government in ensuring full implementation of the Convention in both law and practice.***

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

## Poland

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

The Committee takes note of the information provided in the Government’s report.

***In a request addressed directly to the Government, the Committee raises issues of protection against acts of anti-union discrimination in practice and requests the Government to give consideration, in full consultation with the social partners concerned, to the establishment of prompt and impartial procedures, in order to ensure that trade union officials and members have the right to an effective remedy by the competent national tribunals for acts of anti-union discrimination.***

## Romania

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

The Committee notes the Government’s report and its reply to the comments made by the National Confederation of Trade Unions (CARTEL ALFA) of 15 November 2006 concerning the application of the Convention. The Committee also notes the debate which took place within the Conference Committee in June 2007 and particularly the fact that the Government accepted a technical assistance mission with regard to bringing its law and practice into conformity with the Convention.

The Committee notes the Government’s indication that on 19 July 2007, Parliament adopted Act No. 261/9 concerning the settlement of labour disputes, amending and supplementing Act No. 168/1999. The Government points out that a new clause (e) has been introduced into section 12, adding the words: “in case of divergence from the compulsory annual negotiations concerning wages, working hours, the programme of work and conditions of work”. Nevertheless, the Committee considers that this amendment is not sufficient to settle all the issues raised in its previous observation (with regard to the settlement of labour disputes – sections 55 to 62 – particularly section 62 concerning submission of a dispute to the arbitration commission when the strike lasts over 20 days) and direct request. ***In this regard, the Committee hopes that the technical assistance mission accepted by the Government will take place in the near future.***

***Moreover, the Committee requests the Government to communicate its observations, in the context of the regular reporting cycle, at the next session in November–December 2008, on issues connected with the legislation and the practical application of the Convention which are mentioned in its previous observation (see 2006 observation, 77th Session).***

## Russian Federation

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

The Committee notes the Government's report. The Committee regrets that the Government failed to provide its observations on the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) concerning restrictions imposed on the right to strike and the alleged violation of trade union rights in practice. *The Committee once again requests the Government to provide its observations thereon.*

In its previous observation, the Committee had noted that the Labour Code was amended in 2006 and that several of its previous recommendations were not reflected in the amended Code. *The Committee therefore once again requests the Government to take the necessary measures to modify the following sections of the Labour Code so as to bring it into conformity with Article 3 of the Convention:*

- section 410 of the Labour Code, so as to repeal the obligation to indicate the duration of a strike;
- section 412 of the Labour Code, so as to ensure that any disagreement concerning minimum services in organizations responsible for safety, health and life of people and vital interests of society, where the minimum services must be ensured during a strike, is settled by an independent body having the confidence of all parties to the dispute and not the executive body;
- section 413 of the Labour Code, so as to ensure that, when a strike is prohibited, any disagreement concerning a collective dispute is settled by an independent body and not by the Government.

The Committee further notes from the Government's report that the right to strike is restricted or prohibited in the following services: postal services (section 9 of the Federal Postal Service Act of 17 December 1994), municipal services (section 11(1)(10) of the Federal Municipal Services Act of 8 January 1998) and railways (section 26 of the Federal Rail Transport Act of 10 January 2003), which the Committee does not consider essential, i.e. those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population and in which restrictions and even prohibition may be justified. The Committee is of the opinion 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 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 other 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. In the view of the Committee, such a service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. Secondly, since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. It would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 160–161). *The Committee therefore requests the Government to take the necessary measures to amend its legislation so as to take into account the abovementioned principle.*

The Committee notes that no information was provided by the Government in respect of the right to strike of public servants not exercising authority in the name of the State (previously prohibited by section 11 of the Law on fundamentals of state employment). In this regard, the Committee notes that the Law on civil service of 27 July 2004 repealed the Law on fundamentals of state employment. While the new law does not seem to expressly prohibit the right to strike in civil service, the Committee notes that section 18(6) stipulates that “civil servants must observe restrictions imposed on civil servants by the legislation”. *The Committee requests the Government to indicate whether there are any legislative restrictions imposed on the right to strike of civil servants other than civil servants exercising authority in the name of the State.*

Finally, the Committee notes the Government's indication that the Ministry of Health and Social Development, together with the federal government authorities concerned and the social partners, was currently engaged in work to amend specific legislative acts so as to bring them into conformity with the recommendations of the ILO. *The Committee hopes that further legislative reform will take into account its previous comments and requests the Government to keep it informed of any further developments in this respect.*

The Committee is addressing a request concerning other matters directly to the Government.

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

The Committee notes the Government's report and regrets that it does not provide a reply either to the previous comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) concerning several cases of anti-union discrimination, acts of interference by employers in trade union activities and violations of collective bargaining rights, or to the Committee's previous observation.

The Committee recalls that it had requested the Government to:

- specify the concrete sanctions imposed on employers found guilty of anti-union discrimination and to mention the relevant provisions;
- specify the sanctions imposed for acts of interference by workers' or employers' organizations or their agents in each other's affairs, particularly in the establishing, functioning and administration of the organizations, and to indicate the relevant legislative provisions;
- amend section 31 of the Labour Code so as to ensure that it is clear that it is only in the event where there are no trade unions at the workplace that an authorization to bargain collectively can be conferred to other representative bodies;
- take the necessary measures so as to ensure that the legislation provides for a possibility to conclude an agreement at the occupational or professional level;
- provide further information on the practical application of sections 402 and 403 of the Labour Code and 6(7) of the Law on collective labour disputes, which seem to impose compulsory arbitration;
- provide examples of collective agreements applicable to civil servants and civil employees of the military service and the system of execution of penal sentences.

*The Committee hopes that the Government's next report will contain precise information on the above issues. Hoping that further legislative reform will take into account the previous requests of the Committee, it asks the Government to keep it informed of any further developments in this respect.*

## **Rwanda**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1988)

The Committee notes the Government's reply to the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) of August 2006 with regard to acts of anti-union discrimination, including cases of unjustified dismissal of trade union leaders. In its reply, the Government indicates that under the terms of section 158 of the Labour Code, trade union delegates benefit from the same protection as staff delegates, particularly in respect of dismissal. It also describes the inquiries conducted into the cases of dismissal referred to by the ICFTU and the action taken. The Committee notes the indication that, in view of the delay in the labour administration being informed of the cases and intervening to enforce the law, the Government wishes to take measures, through workers' education activities, to raise the awareness of workers and trade unionists concerning the protection afforded by the law and that employers will be called upon to comply strictly with the protection of trade union delegates. *The Committee notes this information and hopes that the planned activities will contribute to improving the application of the Convention.*

The Committee notes the draft new Labour Code, dated September 2006, forwarded by the Government. The Committee regrets to note that, even though it is indicated in the preamble that the amendments are made to give effect to the recommendations made to the Government by the International Labour Office, the draft Labour Code does not take into account certain of the comments that it has been making for many years on the provisions applying the Convention.

*Articles 1, 2 and 3 of the Convention.* In its previous comments, the Committee recalled that the legislation should make express provision for rapid appeal procedures, coupled with effective and sufficiently dissuasive sanctions against acts of interference and anti-union discrimination. *The Committee requests the Government to take the necessary measures to prohibit, in the draft text of the new Labour Code or in any other legislative text, any acts of interference by employers' and workers' organizations in each other's affairs or of anti-union discrimination, and to adopt dissuasive sanctions for this purpose, not only in the case of staff delegates.*

*Article 4.* The Committee previously requested clarifications concerning collective disputes and, more specifically, section 183 of the Labour Code, and it noted the Government's indication that a collective labour dispute in the context of collective bargaining may be submitted by both parties or by either of them individually to the competent legal authority the decisions of which are binding. The Committee also notes the draft ministerial order on the establishment and functioning of the conciliation board, issued under section 183 of the Labour Code. *It requests the Government to keep it informed of the adoption of this ministerial order.* The Committee recalls that, with the exception 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 at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements established by the Convention, and therefore the autonomy of the bargaining partners (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 257). *The Committee therefore requests the Government to amend section 183 of the Labour Code (section 222 of the new draft Labour Code) so 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.*

The Committee also notes that, under the terms of section 136 of the new draft Labour Code, at the request of one of the representative organizations of workers or of employers, the collective agreement shall be negotiated in a joint commission convened by the Minister of Labour. *In this respect, the Committee recalls that this provision is liable to restrict the principle of free and voluntary bargaining by the parties and it requests the Government to amend section 136 of the new draft Labour Code by establishing that recourse to a joint commission can only generally be had with the agreement of both parties.*

*The Committee urges the Government to take the necessary measures to amend the draft new Labour Code taking into account the principles described above and it trusts that in its next report the Government will indicate real progress in bringing the legislation into conformity with the Convention. In this regard, the Committee recalls that the Government may call upon the technical assistance of the Office.*

*Article 4.* In its previous comments, the Committee requested the Government to adopt measures to encourage and promote the widest possible use of voluntary negotiation procedures and of collective agreements in the country. *Noting the information supplied by the Government relating to the adoption of Ministerial Order No. 62/03 of 2 November 2005 on the establishment and operation of the National Labour Council and the list of its members, the Committee requests the Government to continue providing information on the activities of the National Labour Council in relation to collective bargaining, as well as the number of collective agreements concluded, and the sectors and number of workers covered.*

## Sao Tome and Principe

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

The Committee notes the Government's report and regrets to note that it does not reply to the issues raised. The Committee notes that the World Confederation of Labour (WCL) and the General Union of Workers of Sao Tome and Principe (UGT-STP) sent comments on the application of the Convention which refer mainly to the outstanding issues.

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, paragraph 4, of Act No. 4/92);
- the hiring of workers without consultation with 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);
- 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 inform it, in its next report, of any measures adopted in this regard.*

*The Committee asks the Government, once again, to state whether public employees have the right to organize, and to indicate the applicable provisions in this respect. Finally, the Committee also asks the Government to indicate whether federations and confederations are able to exercise the right to strike.*

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

The Committee notes the Government's report.

*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 notes 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.*

## **Sierra Leone**

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

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

*Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations against acts of anti-union discrimination and acts of interference. The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body had been received and that the document had just been forwarded to the Law Officers' Department. The Committee had asked the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it had been adopted. **Noting that according to the information previously sent by the Government, the revision of the labour laws was submitted to the Law Officers' Department in 1995, the Committee requests the Government once again to make every effort to take the necessary action for the adoption of the new legislation in the very near future and to keep it informed in this regard.***

*Article 4. The Committee requested the Government in its previous observation to provide information on any collective agreements covering teachers that had been concluded. The Committee notes the Government's indication in a previous report that the Sierra Leone Teachers' Union has been conducting free and voluntary negotiation with employers under the trade group negotiation councils established by law to fix better terms and conditions of employment for the workers. **The Committee requests the Government to provide detailed information on the collective agreements in force in this sector.***

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

## **South Africa**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)**

The Committee notes the Government's reply to the comments previously sent by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation).

The Committee recalls that the ICFTU comments referred to acts of violence and arrests during the course of strikes and demonstrations, as well as massive dismissals of strikers in various sectors (truck drivers, toll operators, metalworkers, teachers, rural workers, public sector, etc.) in 2005.

The Committee takes due note of the detailed information provided by the Government according to which, the issue of massive dismissals was related to restructuring operations, which do not constitute an exclusively South African phenomenon and were carried out within a legal framework which provides for consultations with employees as well as conciliation/mediation facilities and the possibility to refer the matter to the Labour Court for adjudication or the Commission for Conciliation, Mediation and Arbitration (CCMA) for arbitration. Furthermore, with regard to the intervention of the police in various incidents the Government indicates that this was prompted by the commission of violent and criminal acts. The Committee takes due note of the detailed information provided by the Government on each incident mentioned by the ICFTU which indicates that police intervention was not prompted by a motive to intimidate workers but rather to uphold the law and protect property and lives. Finally, the Committee notes that the Government emphasizes that the Bill of Rights enshrined in the Constitution of the country provides that although everyone has a right to assemble, demonstrate and picket, these actions must be peaceful and unarmed; everyone has the right to life and to be free from all forms of violence from either public or private sources.

## **Swaziland**

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

1. The Committee takes note of the Government's report. It also notes the comments of 29 March 2007, by the Swaziland Federation of Trade Unions (SFTU) referring to issues under examination.

2. The Committee wishes to recall that for several years it has been referring to provisions of the law that are inconsistent with those of the Convention, or has requested information on the effect given to some provisions in practice. In its previous comments, it asked the Government:

- to repeal the 1973 Decree/State of Emergency Proclamation and its implementing regulations, concerning trade union rights;

- to amend the 1963 Public Order Act so that it will not be used to repress lawful and peaceful strikes;
- to amend the legislation or enact other laws to ensure that prison staff and domestic workers (section 2 of the Industrial Relations Act (IRA)) have the right to organize in defence of their economic and social interests;
- to amend section 29(1)(i) of the Industrial Relations Act (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 IRA section 86(4) 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;
- 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;
- with regard to the civil liability of trade union leaders, to continue to provide information on any practical application of section 40, and in particular the charges that may be brought under IRA section 40(13); and
- to provide information on the effect given in practice to IRA section 97(1) (criminal liability of trade union leaders) and to ensure that penalties applying to strikers under section 88 are proportionate to the seriousness of the offence and that enforcement of section 87 does not impair the right to strike.

3. In this respect, the Committee recalls that in its previous observation it noted that the Government and the social partners signed an agreement undertaking to set up a Special Consultative Tripartite Subcommittee within the framework of the High-level Steering Committee on Social Dialogue. The terms of reference of the Subcommittee are: (1) to review the impact of the Constitution on the rights embodied in Convention No. 87; and (2) to make recommendations to the competent authorities to eliminate the discrepancies between the existing legislative provisions and the Convention. The Committee notes that the High-level Social Dialogue Committee has decided, in respect of the constitutional issues, that the ongoing engagement between the Government and the national Constitutional Assembly, which extended beyond those groups in the Tripartite Subcommittee to involve other interest groups, should not be disturbed. Furthermore, the Committee notes, as regards legislative issues, that the Labour Advisory Board (LAB) of a tripartite nature drafted an Industrial Relations (Amendment) Bill proposing amendments to the IRA in relation to sections 2, 29(1)(i), 85 and 86, taking into account comments made by the Committee (see above). The Committee nevertheless observes that some questions were not included but were pending consultation with the ILO (the right to strike in sanitary services).

***The Committee expresses the firm hope that all its comments, and where necessary the technical advice of the Office, will be taken into account in amending the Industrial Relations (Amendment) Bill and that it will be adopted in the near future. It requests the Government to keep it informed of any development in this respect.***

***Furthermore, the Committee hopes that the Government will take 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; and (3) to guarantee that prison staff have the right to organize in defence of their economic and social interests. The Committee encourages the Government to continue its efforts to review and amend the legislation and to provide information on any development in this respect.***

4. *Report from the Independent Judicial Inquiry.* Finally, the Committee takes due note of the report of the Independent Judicial Inquiry set up as recommended by the Committee and which visited Swaziland from 2 to 9 December 2006, to investigate and clarify all the facts on the allegations of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) according to which, in August 2003, a three-day protest by Swazi labour federations was violently broken up by police using tear gas and rubber bullets, during which a trade unionist was killed. In particular, the Committee notes that the Independent Judicial Inquiry: (1) was not able to conclude that there was a death of a person during the protest action; however, the inquiry declared itself surprised by the fact that no records on casualties and fatalities were available for the days of the protest and indicated that this situation did not help to remove all doubt; and (2) the security forces used force that was disproportionate to the circumstances and this was substantiated by pictures and witnesses. In these circumstances, while noting that the Government has taken note of the findings of the Independent Judicial Inquiry and continues to discuss them, the Committee would like to recall that the authorities should resort to the use of force only in situations where law and order are seriously threatened, and that the intervention of the forces of law and order should be in due proportion to the danger to law and order that the authorities are attempting to control, and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in disturbance of the peace. ***The Committee firmly hopes that the Government will guarantee full respect of the principles set out above in the future.***

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

The Committee notes the Government's report. In its previous observation, the Committee noted the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) of 10 August 2006, which referred to issues that have already been examined and a number of acts of anti-union discrimination in the textile sector. *The Committee once again requests the Government to send its observations in respect of the ICFTU comments.*

The Committee recalls that in its previous comments it referred to the following points:

- the need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers' organizations against acts of interference by employers or their organizations (*Article 2 of the Convention*); and
- the need to adopt a specific legislative provision so as to ensure that, if no union covers more than 50 per cent of the workers, this does not prevent the exercise of the collective bargaining rights of the unions in the unit at least on behalf of their own members (*Article 4 of the Convention*).

The Committee notes from the report of the Government that a process has already commenced within the social dialogue framework for all the comments of the Committee to be addressed positively. A high-level steering committee has already been established and has already decided to fast-track the comments by setting up subcommittees and task teams to deal with them and submit their draft by the end of February 2007. The Committee notes that, in this process, the Government is counting on the technical assistance of the Office.

The Committee has been recently informed that the Labour Advisory Board (LAB), of tripartite nature, is reviewing the legislative issues raised by the Committee for many years and has drafted an Industrial Relations (Amendment) Bill which includes a number of amendments to the Industrial Relations Act. The Bill refers to the need to tackle the issue of adopting a specific legislative provision so as to ensure that, if no union covers more than 50 per cent of the workers, this does not prevent the exercise of the collective bargaining rights of the unions in the unit, at least on behalf of their own members. The Committee, however, notes that the draft does not address the issue of the adoption of specific provisions, accompanied by sufficiently effective and dissuasive sanctions, for the protection of workers' organizations against acts of interference by employers or their organizations, as required by *Article 2* of the Convention. *The Committee requests the Government to take the necessary measures to address also this issue in the draft Bill.*

*The Committee encourages the Government to continue its efforts to review and amend the legislation, where necessary with the technical assistance of the Office, and expresses the hope that the legislation will be brought into full conformity with the requirements of the Convention in the near future. It requests the Government to provide information on any developments in this regard.*

## **Switzerland**

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

The Committee notes the Government's report for the period ending May 2006, which was received at the end of its previous session (November–December 2006) and of which it decided to postpone the examination. The Committee notes that the Government attaches comments by the Union of Swiss Employers (UPS) and the Swiss Federation of Trade Unions (USS). It also notes the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation), dated 12 July and 10 August 2006, which relate to issues that are already under examination. The Committee further notes the discussion in the Committee on the Application of Standards at the 95th Session of the International Labour Conference (June 2006).

*Articles 1 and 3 of the Convention. Protection against anti-union dismissals.* In its previous observation, the Committee noted the comments of the USS according to which protection against anti-union dismissals is not adequate and its reference to a number of court decisions on this matter. In its statement to the Conference Committee, the Government however indicated that adequate protection did, in practice, exist, and included recourse to the courts against acts of anti-union interference. In its report, the Government emphasizes that: (a) Swiss law provides adequate protection for trade union delegates and representatives, thereby complying fully with the Convention; (b) the current system under Swiss legislation relating to unjustified termination of employment takes into account the fact that compensation which may attain six months' wages constitutes, particularly in the view of Parliament, a sufficiently dissuasive measure in view of the fact that the great majority of Swiss enterprises are small and medium-sized enterprises; (c) the Parliament did not wish to introduce into Swiss law respecting contracts of employment the principle of the reinstatement of dismissed workers, which is not required by the Convention or the ILO's supervisory bodies; (d) the principles referred to previously were set out democratically and confirmed by recent parliamentary interventions, and the question does not therefore arise in this context of proposing a legislative amendment establishing additional protection against acts of anti-union discrimination, as it would be doomed in advance to failure and would further increase the parliamentary workload; (e) the

courts take into account all objective, and even subjective circumstances in granting compensation to workers, the amount of which is determined equitably; (f) the cases referred to by the USS have all been the subject of regular legal action before the courts and the rights of the parties have been respected, even in the cases in which the parties have agreed upon arrangements on the basis of legal texts; and (g) only five of the 11 cases raised by the USS in its complaint of 14 May 2003 may be considered as valid.

The Government adds in its report that the Federal Council provides detailed explanations of the tripartite negotiations held following the adoption in November 2004 of the interim conclusions of the Committee on Freedom of Association in Case No. 2265. The Tripartite Federal Commission for ILO Affairs examined the case. However, in the absence of agreement, it was not considered necessary for measures to be adopted to strengthen protection against unjustified dismissals on anti-trade union grounds or to make it more effective in practice. However, it is recognized that the discussion on strengthening protection against unjustified dismissals may be pursued in a broader political and democratic context at the national level.

The Government indicates that the parliamentary and democratic channels exist to ensure a serene political debate at the national level (parliamentary interventions and popular initiatives) and accordingly to achieve the objective pursued by the USS of effective protection in practice against unjustified dismissals for anti-trade union reasons. Finally, the Government reports recent changes in the case law respecting penalties against dismissals, which it describes as being more flexible and more favourable to the interests of dismissed workers than described by the USS.

In its comments, the USS observes that it put forward proposals relating to protection against anti-trade union dismissals. These proposals were discussed in November 2005, but were not retained by the Government as they were not accepted by the employers. The USS adds, citing cases, that anti-union practices and dismissals still occur and that judicial practice does not correspond to the criteria for protection against acts of anti-union discrimination set out by the Committee in its 1994 General Survey.

The Committee notes that the Committee on Freedom of Association, in its recommendations when it last examined Case No. 2265 in November 2006, requested the Government to take measures to provide the same protection to trade union representatives who suffer anti-union discrimination as for victims of dismissals that violate the principle of equal treatment for men and women, and it encouraged the continuation of tripartite discussions on the whole matter, including a review of the situation in certain cantons with regard to compensation for anti-union dismissals (see 343rd Report of the Committee on Freedom of Association, paragraph 1148). ***In these conditions, taking into account the Government's statement that the debate on reinforcing protection against unjustified dismissals may be pursued in a broader political and democratic context at the national level and noting that it has not been informed, either by the Government or the trade union organization, of developments during the course of 2007 following the conclusions of the Committee on Freedom of Association, the Committee requests the Government to keep it informed of any development towards greater protection against anti-union dismissals and any development in case law respecting the compensation granted for unjustified dismissal for anti-union reasons, including by cantonal courts.***

***Article 2. Protection against acts of interference.*** In its previous observation, the Committee noted the misgivings expressed by the USS concerning the establishment of staff associations partially financed by employers and the replacement of unions by staff committees, all at the instigation of employers so as not to have to negotiate with the unions. The Committee notes the Government's indication in its report that legal procedures allow the social partners to assert their rights. The Government indicates that the courts can penalize acts of interference and order the holding of collective bargaining, and it refers in this respect to a decision of December 2005 of the Collective Labour Relations Chamber of the Canton of Geneva finding in favour of the participation of an enterprise union in collective bargaining. In its comments, the USS expresses the hope that federal case law will develop in the same direction as in the above decision, as views currently differ between cantons on this matter. ***The Committee requests the Government to keep it informed of developments in case law, including at the cantonal level, on this matter.***

***Article 4. Promotion of collective bargaining.*** The Committee noted previously that, according to the USS, collective bargaining in Switzerland is not sufficiently extensive and for years the Swiss Confederation has shown no interest in furthering the implementation of the Convention. The USS also refers to the lack of initiatives by the public authorities to encourage voluntary collective bargaining machinery within the meaning of the Convention. In its latest comments, the USS recalls that, according to the latest federal statistics, the coverage of collective bargaining is declining. It indicates that it has proposed tangible measures to promote collective bargaining and does not understand the Government's inaction when the majority of enterprises are small and medium-sized and it is materially impossible for trade unions to approach all enterprises that are not affiliated to an employers' organization, just as it would be impossible to take action in court against all those enterprises refusing to engage in collective bargaining.

The Government provided statistical data for 2003 to the Conference Committee and reported that there were 594 collective agreements in force covering 1,414,000 employees, of whom 36.3 per cent were women. The total proportion of employees covered by collective agreements is 36.7 per cent, according to official figures. Finally, these agreements primarily cover the construction sector (where 66.4 per cent of workers are covered by a collective agreement), industry (40.5 per cent), services (35 per cent) and agriculture (7.2 per cent). In its report, the Government adds that a collective labour agreement can be extended by the federal and cantonal authorities at the request of the parties to the agreement and

thereby be made applicable to all employers and workers in an economic branch or occupation, on condition that certain legal requirements are fulfilled.

The Committee notes these indications. *It requests the Government to indicate the manner in which the law and case law address abusive practices in relation to collective bargaining (substantiated acts of bad faith, unjustified delay in the holding of negotiations, failure to comply with agreements, etc.), and any measures adopted to promote the broadest development and utilization of machinery for the voluntary negotiation of collective agreements.*

## Syrian Arab Republic

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

The Committee notes the Government's report. In its previous comments, the Committee had requested the Government to indicate whether the right to organize of public servants is governed by section 2 of Legislative Decree No. 84 of 1996, as amended, or by other legislative provisions and, if so, to provide copies of the relevant legislation. The Committee notes with interest the Government's indication that the right to organize of civil servants is governed by section 2 of Legislative Decree No. 84 of 1996 which applies to every worker, since no exceptions have been introduced to this provision by any other legal text so far.

*Article 3 of the Convention.* In its previous comments, the Committee had requested the Government to take the necessary measures to repeal or amend the legislative provisions which establish a regime of trade union monopoly (sections 3, 4, 5 and 7 of Legislative Decree No. 84; sections 4, 6, 8, 13, 14 and 15 of Legislative Decree No. 3, amending Legislative Decree No. 84; section 2 of Legislative Decree No. 250 of 1969; and sections 26–31 of Act No. 21 of 1974). The Committee takes note of the Government's reply indicating that the unity of trade union organization is not contrary to the substance of the Convention and results from the decisions and orders of the working class at different levels of the union assemblies; it would be illogical to pretend to defend workers' freedom and then oppose the final trade union structure freely chosen by the workers themselves for their representation as an expression of their interests. The Committee recalls once again that although it is generally to the advantage of workers and employers to avoid proliferation of competing organizations, trade union unity directly or indirectly imposed by law runs counter to the standards expressly laid down in the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 91). *The Committee once again requests the Government to indicate in its next report the measures taken or contemplated so as to repeal or amend the legislative provisions which establish a regime of trade union monopoly (sections 3, 4, 5 and 7 of Legislative Decree No. 84; sections 4, 6, 8, 13, 14 and 15 of Legislative Decree No. 3, amending Legislative Decree No. 84; section 2 of Legislative Decree No. 250 of 1969; and sections 26–31 of Act No. 21 of 1974).*

The Committee's previous comments concerned legislative provisions which authorize the Minister to set the conditions and procedures for the investment of trade union funds in the financial services, and industrial sectors (section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982). The Committee notes that, according to the Government, the signature of the Minister is required merely as an administrative formality under the scope of his responsibility for the implementation of labour laws and related issues. The Committee recalls that several legislative amendments introduced in 2000, which were taken note of in the Committee's previous comments, were aimed at guaranteeing the freedom of trade unions to organize their administration and activities without interference but did not explicitly amend the provision authorizing the Minister to set the conditions for investment of trade union funds. *The Committee requests the Government to provide details in its next report on the specific conditions established by the Minister on the basis of section 18(a) of Legislative Decree No. 84 (as amended by section 4(5) of Legislative Decree No. 30 of 1982) for the investment of trade union funds in the financial services, and industrial sectors.*

In its previous comments, the Committee had requested the Government to take the necessary measures to repeal or amend the legislative provisions which determine the composition of the General Federation of Trade Unions (GFTU) Congress and its presiding officers (section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84). The Committee takes note of the Government's reply indicating that trade unions in the Syrian Arab Republic are independent, that their administration and activities are organized in accordance with their internal statutes and that their independence is secured by national legislation. *Noting that the Government's report does not address specifically the issue of the provisions which determine the composition of the General Federation of Trade Unions (GFTU) Congress and its presiding officers (section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84), the Committee once again requests the Government to provide specific information on the measures taken or contemplated to repeal or amend these provisions.*

In its previous comments, the Committee had requested the Government to take the necessary measures to amend section 44(B)(3) of Legislative Decree No. 84 so as to allow a certain percentage of trade union officers to be non-Arab, at least after a reasonable period of residence in the country. The Committee notes that, according to the Government, by virtue of section 25 of Legislative Decree No. 84 of 1968, as amended by section 1(c) of Act No. 25 of 2000, foreign non-Arab workers have the right to join an occupational trade union; consequently, according to the Government, they have

the right to present themselves as candidates to trade union elections. The Committee notes, however, that section 44(B)(3) explicitly sets Arab nationality as a condition of eligibility to trade union office and that the provisions mentioned by the Government do not amend or repeal this provision. *The Committee requests the Government to indicate the provisions which explicitly amend section 44(B)(3) of Legislative Decree No. 84 so as to allow a certain percentage of trade union officers to be non-Arab.*

In its previous comments, the Committee had requested the Government to take the necessary measures to amend legislative provisions which restrict the right to strike by imposing heavy sanctions including imprisonment (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949, issuing the Penal Code). The Government indicates in this respect that the relevant amendment of the Penal Code requires more time than other amendments and is currently being followed up on. The Committee recalls that sanctions for strike action should not be disproportionate to the seriousness of the violations, and that both excessive recourse to the courts in labour relations and the existence of heavy sanctions for strike action may well create more problems than they resolve (see General Survey, op. cit., paragraphs 177–178). *The Committee requests the Government to indicate in its next report the progress made with regard to the adoption of amendments to the legislative provisions (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949, issuing the Penal Code) which restrict the right to strike by imposing heavy sanctions including imprisonment.*

In its previous comments, the Committee had requested the Government to take the necessary measures to amend legislative provisions which impose forced labour on anyone causing prejudice to the general production plan decreed by the authorities, by acting in a manner contrary to the plan (section 19 of Legislative Decree No. 37 of 1966 concerning the Code on economic penalties). The Committee notes that, according to the Government, the penalty of forced labour was repealed by virtue of Act No. 34 of 2000. The Committee notes however, that Act No. 34 of 2000 concerns amendments to the Agricultural Relations Act of 1958 and does not appear to repeal any penalty of forced labour. *The Committee requests the Government to indicate in its next report the provisions which have been adopted or are being contemplated in order to repeal section 19 of Legislative Decree No. 37 of 1966 concerning the Code on economic penalties which imposes forced labour on anyone causing prejudice to the general production plan.*

## The former Yugoslav Republic of Macedonia

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

The Committee notes the Government's report. The Committee recalls that in its previous comments, it had requested the Government to take the necessary steps to amend sections 212, 213 and 219 of the Labour Relations Law (2005) so as to:

- lower the 33 per cent representation requirement imposed on trade unions and employers (or their organizations) for collective bargaining purposes at all levels;
- adopt legislative provisions regulating the procedure for determining the most representative organization, based on objective and pre-established criteria; and
- adopt legislative provisions regulating the procedure for establishing the negotiation board (the members of which are appointed by trade unions) when no trade union organization represents 33 per cent of employees or no employers' organization meets the same requirement.

The Committee notes the Government's indication that it intends to begin a "Twinnig project" in October 2007 to review the existing labour legislation in order to harmonize it with the EU legislation. In the framework of this project, the issue of representativeness will be examined. The duration of the project will be 15 months; therefore, the Government expects that the necessary changes will be introduced into the legislation by the end of next year. *The Committee trusts that all its comments will be taken into account in the process of legislative revision and requests the Government to keep it informed in this respect.*

### **Workers' Representatives Convention, 1971 (No. 135) (ratification: 1991)**

The Committee notes the Government's report. The Committee refers to its comments in the framework of Convention No. 98.

## Togo

### **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:

*Article 2 of the Convention. Export processing zones.* The Committee also notes the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) on 10 August 2006 referring to matters already raised in its previous observation, and particularly the exercise of trade union rights in export

processing zones. *In this regard, recalling that for several years it has been commenting on the need for workers in export processing zones to benefit from trade union rights, the Committee requests the Government to keep it informed of any trade union organization that has requested the legal capacity to defend workers in export processing zones.*

*Article 3. Right of foreign workers to hold trade union office.* In its previous comments, the Committee noted the draft amendment prepared by the Government to bring section 6 of the Labour Code, concerning the right of foreign workers to hold trade union office, into conformity with the Convention. The Committee noted that, according to the Government, the draft text of the new Labour Code, which was in the final stages of adoption, took this concern into account and contained provisions that are compatible with the Convention. *The Committee requests the Government to keep it informed in this respect and to provide a copy of the abovementioned text.*

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

## Trinidad and Tobago

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

The Committee notes the Government's report. The Committee has been referring for a number of years to the need to amend various sections of the Industrial Relations Act, as amended, so as to: (1) enable a simple majority of the workers in a bargaining unit (excluding those workers not taking part in the vote) to call a strike (section 59(4)(a)); (2) ensure that any recourse to the courts by the Ministry of Labour or by one party only to end a strike is limited to cases of strikes in essential services in the strict sense of the term (sections 61 and 65); (3) ensure that prohibition of industrial action in essential services is limited to cases of strike in essential services in the strict sense of the term (section 67); and (4) repeal the prohibition of industrial action, under penalty of 18 months' imprisonment, for the teaching service and employees of the Central Bank (section 69).

The Committee notes that the Government has sought the views of the social partners on its observations through a tripartite committee established in 1996 to give effect to ILO Convention No. 144. It notes that the parties have: (1) agreed that a legal assessment of the implications of amending section 59(4)(a) of the Act was required for a position to be taken; (2) concurred with the Committee's view as regards sections 61 and 65; (3) agreed that the public school bus service should be excluded from the list of essential services (the workers' group did not consider any of the services listed in the second schedule of the Act as essential services in the strict sense of the term); and (4) diverged as regards section 69 (the workers' representative supported the amendment of that section whereas the Government and employers' representatives wanted further information on the practice in other countries, in particular those of the Caribbean Community (CARICOM)). The Committee also notes that the social partners have agreed to refer further consideration of amendment to the Industrial Relations Act to the Standing Tripartite Committee on Labour Matters which will be required to examine the request of the Committee to amend the various sections of the Act. However, this Standing Tripartite Committee is to be reconstituted given the expiration of its term on December 2006.

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

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)**

The Committee takes note of the Government's report.

1. *Article 4 of the Convention.* The Committee's previous comments concerned the need to amend section 24(3) of the Civil Service Act that affords a privileged position to already registered associations, without providing objective and pre-established criteria for determining the most representative association in the civil service. The Committee notes the Government's statement to the effect that there have been no changes to section 24(3) of the Civil Service Act to date and that the Chief Personnel Officer is in the process of revising all legislation governing employment in the civil service and has been preparing a package of amendments which, when completed, will be submitted to the social partners for comments. *The Committee requests the Government to ensure that its comments will be taken into consideration in this process. It expresses the hope that the legislation will be modified so as to ensure full respect for the principles of the Convention and requests the Government to provide copies of the amended texts as soon as they have been adopted.*

2. *Promotion of collective bargaining.* In its previous comments, the Committee referred to the need to amend section 34 of the Industrial Relations Act in order to ensure that, in cases in which no trade union represents the majority of workers, the minority unions can negotiate jointly a collective agreement applicable in the negotiating unit, or at least conclude a collective agreement on behalf of their own members. The Committee notes that the Government has sought the views of the social partners on its observations through a national tripartite committee. It notes that the parties did not agree as to whether this section of the Act should be amended and that the matter is to be referred to the Standing Tripartite Committee on Labour Matters which will be required to examine the request of the Committee to amend the various sections of the Act. However, this Standing Tripartite Committee is to be reconstituted given the expiration of its term in December 2006. *The Committee requests the Government to indicate in its next report any measure adopted in*

*this respect and expresses the hope that the legislation will be modified soon in accordance with the principles of the Convention.*

## Turkey

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

The Committee notes the discussion in the Conference Committee on the Application of Standards in June 2007.

The Committee notes the Government's reply to the comments made by: the Confederation of Public Employees Trade Unions (KESK) in communications dated 2 September 2006 and 31 August 2007 (government communications of 16 February and 24 October 2007); the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in communications dated 12 July and 10 August 2006 (government communication of 2 January 2007); the Confederation of Progressive Trade Unions of Turkey (DISK) dated 9 and 24 April 2007 (government communication dated 16 October 2007). The Committee finally notes the comments made by the ITUC in a communication dated 28 August 2007 with regard to continuing government interference in trade union affairs. ***The Committee requests the Government to provide its observations thereon.***

*Civil liberties.* The Committee notes that the Conference Committee deeply regretted that the Government had still not provided any information in reply to the serious allegations made by workers' organizations with regard to police violence and arrests of trade unionists and government interference in trade union activities, including the banning of union-related booklets, posters, etc. The Committee emphasized that respect for basic civil liberties is an essential prerequisite to the exercise of freedom of association and requested 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 recalls that the allegations in question (made by the ICFTU, KESK and the Turkish Confederation of Public Workers Association (Türkiye Kamu-Sen) concerned the following issues: (i) the violent repression by Istanbul police of two peaceful demonstrations on 8 March 2005 to mark International Women's Day; (ii) the violent suppression by the police of a peaceful demonstration organized by Egitim Sen (affiliate of the KESK) on 26 November 2005 to demand a re-evaluation of overtime and better sanitary inspections, leading to the injury of 17 demonstrators and, as indicated in the communication by the KESK dated 31 August 2007, the conviction of 11 of its trade union executive members to prison sentences of 15 months; according to the KESK, its President Ismail Haki Tombul and the former President of YAPI-YOL SEN, Fehmi Kutan, risk imprisonment as they cannot have their sentences suspended because they were previously convicted; the issue depends on the outcome of their appeal, which is currently pending; (iii) violent police dispersion of a demonstration by the KESK on 30 May 2006, in protest of the social security reform under discussion in Parliament; (iv) the ban of union-related posters, advertisements and calendars in some public institutions.

The Committee notes that according to the Government, the holding of demonstrations in conformity with the law does not fall under the mandate of the Ministry of Labour and does not seem to involve trade union rights in the framework of the Constitution, the Trade Union Act No. 2821 and international standards on freedom of association. The prosecution of officials of the KESK and its affiliated trade unions after the demonstration organized by Egitim Sen on 26–27 November 2005, was due to the non-respect of the formalities for the staging of demonstrations, the closing by the demonstrators of central highways to traffic and attacks by the demonstrators on the police with clubs and stones. With regard to the comments by the KESK, the Government refers to Circular No. 2005/14 which provides that there shall not be any disciplinary inquiry into press statements of province and district representatives of unions and confederations as well as officials of union branches, unions and confederations, in the context of their union activities, provided that these statements are not related to their duties (as public employees). Moreover, in the same Circular, it is envisaged that meetings and demonstrations organized by the province and district representatives of the unions and confederations and the officials of union branches, unions and confederations under the provisions of the Act on Meetings and Demonstrations No. 2911 will be facilitated. Finally, the Government also makes reference to various Circulars of the Prime Minister ordering the administration to observe the relevant provisions of the legislation and not to obstruct union activities (circulars dated 6.6.2002, 12.6.2003 and 2.6.2005).

The Committee recalls that police intervention should be limited to cases where there is a genuine threat to public order and should be in due proportion to such threat. Governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations. ***The Committee requests the Government to indicate in its next report measures taken with a view to giving 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.***

*Legislation adopted.* 1. The Committee notes the text of Act No. 5672 of 26 May 2007 communicated by the Government. The Act amended section 14(14) of Act No. 2821 by lifting the requirement of ten years' employment in order to enjoy eligibility for trade union office (restrictions remain with regard to election to the General Council of trade unions). The Committee notes moreover from the statement of the Government representative to the Conference

Committee, that the lawsuit brought in 2001 against the DISK in respect of the election of its representatives was rejected in the final instance on 22 December 2004.

2. The Committee notes the text of Act No. 5620 of 4 April 2007 communicated by the Government. It notes that section 4(2) of this Act amends section 3(a) of Act No. 4688 so that public employees working under fixed-term contracts are now entitled to join public employees' unions.

The Committee notes that in its conclusions, the Conference Committee, while noting the above steps towards the fuller application of the Convention, regretted that these steps were insufficient in light of the numerous occasions on which that Committee and the Committee of Experts had urged the Government to take rapid steps to bring its law and practice into conformity with the Convention.

3. The Committee notes the text of the Associations Act No. 5253 of 4 November 2004. The Committee notes that according to section 35 of the Act, 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. Thus, the Committee observes that section 19 (which is applicable to workers' and employers' organizations), enables the Minister of Internal Affairs or the civil administration authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time, with 24 hours notice. The Committee considers that the supervision of accounts should be limited to the obligation of submitting periodic financial reports or to cases where serious grounds exist for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention), or if there is a need to investigate a complaint by a certain percentage of the members of the employers' or workers' organizations; both the substance and the procedure of such verifications should be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 125). The Committee observes, moreover, that section 26 of the abovementioned Act (which is applicable to workers' and employers' organizations) establishes a requirement of permission by the civil administration authority in order for an organization to open student dormitories and boarding houses linked to education and teaching activities. The Committee recalls that according to *Article 3 of the Convention*, workers' and employers' organizations have the right to organize their activities, such as, for instance, training, without interference which would restrict this right or impede its lawful exercise. ***The Committee requests the Government to indicate in its next report the measures taken or contemplated to amend sections 19 and 26 of Act No. 5253 of 2004 so that: (i) 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; and (ii) activities of workers' and employers' organizations, such as the opening of training centres, is not subject to permission from the authorities.***

*Draft bills.* The Committee has been commenting for a number of years on draft bills to amend Act No. 4688 on public employees' trade unions (as amended by Act No. 5198), Act No. 2821 on trade unions, and Act No. 2822 on collective labour agreements, strike and lockout. In its previous observation, the Committee took note of several improvements to the draft bills amending Acts Nos 2821 and 2822: (1) the removal of the condition of nationality for eligibility to election as trade union officer; (2) the abrogation of 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, paragraph 3); (3) the abrogation of the provision under which the Governor is entitled to appoint an observer at the general congress of a trade union (Act No. 2821, section 14, paragraph 1); (4) the removal from the list of activities where strikes are prohibited of the following activities: the production of lignite coal for thermal plants; public notaries; sea and land transport or railway, and other rail transport (Act No. 2822, section 29); urban public transportation on land, sea or rail; lignite production to feed power plants; exploration, production, refining and distribution of petroleum; petrochemicals the production of which is based on naphtha or natural gas; (5) the removal of the prohibition of unions' television and radio stations which results from Act No. 3984; (6) the exclusion of unions from the scope of section 43 of Associations Act No. 2908, which provides that associations are allowed to invite any foreigner to Turkey or send one of their members abroad, provided due notification is given in advance to the Governor.

While noting the positive steps taken so far, the Committee is bound to observe that the draft bills in question have still not been finalized and passed into law and that the Government gives no specific indication of the timetable for their adoption, so as to translate the provisions of these draft instruments into tangible progress on the ground. ***The Committee requests the Government to indicate in its next report a specific timetable for the adoption and enactment of the draft bills amending Acts Nos 4688 on public employees' trade unions, Act No. 2821 on trade unions, and Act No. 2822 on collective labour agreements, strike and lockout. The Committee expresses the firm hope that the bills in question will be finalized and passed into law without further delay and that these bills as well as the future legislation will fully take into account all the comments made by the Committee with a view to bringing national law into conformity with the Convention.*** The Committee enumerates once again these comments below.

*Article 2 of the Convention.* 1. *The exclusion from the right to organize of a number of public employees (sections 3(a) and 15 of Act No. 4688).* The Committee notes that, although the abovementioned Act No. 5620 of 4 April 2007 amended section 3(a) of Act No. 4688 so that public employees working under fixed-term contracts are now entitled to join public employees' unions, no change has been introduced with regard to the prohibition of the right to organize of

public employees under probation (section 3(a) of Act No. 4688) and with regard to the exclusion from the right to organize of several categories of public employees including prison guards, civilian personnel in military installations, senior public employees, magistrates, etc. amounting, according to the KESK, to 500,000 public employees (section 15 of Act No. 4688). It further notes that, under section 6 of Act No. 4688, a public official must have been in employment for two years to become a founding member of a union.

The Committee underlines that *Article 2* of the Convention provides that workers without distinction whatsoever, including prison guards, civilian personnel in military installations, senior public employees and magistrates, should have the right to form and join organizations of their own choosing and that the only admissible exception under the Convention concerns the armed forces and the police. As regards public employees “in positions of trust”, the Committee recalls once again that it is not compatible with the Convention to exclude totally these public officials from the right to organize. On the other hand, to bar such officials from the right to join trade unions representing other workers is not necessarily incompatible with the Convention provided that two conditions are met: first, that the officials concerned have the right to form their own organizations to defend their own interests; and, second, that the category of the employees concerned is not so broadly defined as to weaken the organizations of other public employees by depriving them of a substantial proportion of their actual or potential membership. ***The Committee once again requests the Government to indicate in its next report the measures taken or contemplated so that, in the framework of the legislative reform under way, all workers, without distinction whatsoever, are guaranteed the right to establish and join organizations of their own choosing.***

2. *The criteria under which the Ministry of Labour determines the branch of activity covering a worksite (unions must be constituted on a branch activity basis) and the implications of such determination on the workers’ right to form and join organizations of their own choosing (sections 3 and 4 of Act No. 2821).* The Committee notes that the statement of the Government representative to the Conference Committee did not provide any new information in this regard and, in particular, did not specify the criteria on which a particular worksite may be classified in a given branch of activity, as previously requested by the Committee. In previous reports, the Government had indicated that classification of the work under a branch of activity takes into account international standards and the views of workers’ and employers’ confederations and that the relevant decision of the Ministry of Labour may be appealed against at the local labour court and the court of cassation. According to the Government, the draft bill on trade unions would envisage fewer branches of activity in order to make a more rational classification and pave the way for much stronger trade unions.

In this respect, the Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2537 (347th Report, paragraphs 1–26) which concerned allegations that as a result of the provisions limiting trade union organization by branch of activity, YAPI-YOL SEN automatically lost members who, pursuant to an administrative reorganization, were transferred from the General Directorate of Village Services to local governments (according to the Government, they were taken out of the branch of activity entitled “Public works, construction and village services” and were transferred to the branch relevant to local governments). According to YAPI YOL SEN, regardless of the fact that these workers continued to perform identical tasks under a new administrative authority, they automatically lost their membership in YAPI-YOL SEN; thus, membership fees are no longer deducted and the check-off system is considered invalid, leading the trade union to financial difficulties. The Committee on Freedom of Association observed with regret that this is the second case concerning Turkey where the Ministry of Labour and Social Security modified the branch of activity classification on the basis of questionable criteria – which do not relate to the nature of activity carried out but to the authority under which work is performed – with very serious consequences for the trade unions concerned (loss of membership and representation rights) [see Case No. 2126, 327th Report, paras 805–847]. The Committee notes the further observations made by the Committee on Freedom of Association according to which, the duties of trade union officers are automatically terminated under section 16 of Act No. 4688 where changes occur in branch classifications.

The Committee deeply regrets the recurrent unilateral interference by the Government in trade union membership and activities, in particular through the narrow determination of categories of workers that may come together in a single trade union, which could, as a consequence, lead to excessive fragmentation of trade unions in the public sector. The Committee recalls once again that, while it considers that the setting up of broad bands of classification relating to branches of activity for the purpose of clarifying the nature and scope of industrial level unions is not in itself incompatible with the Convention, this classification and its modification should be determined according to specific objective and pre-established criteria relating in particular to the nature of the functions carried out by the workers at the worksite concerned so as to avoid any arbitrary determination and thus to guarantee fully the right of workers to form and join organizations of their own choosing. ***The Committee therefore requests the Government to provide in its next report information on steps taken or contemplated so as to:***

- (i) ***amend section 5 of Act No. 4688 as well as the Regulation on the Determination of Branch of Activity of Organizations and Agencies, which determine the branches of activity according to which public employees’ trade unions may be established, so as to ensure that these branches are not restricted to any particular ministry, department or service, including local governments;***
- (ii) ***amend the Regulation of 2 August 2005 (which amends the Regulation on the Determination of Branch of Activity of Organizations and Agencies) so as to maintain Yapi-Yol Sen members within the branch of activity***

*entitled “Public works, construction and village services” in conformity with the nature of their functions and their willingness to remain affiliated to Yapi-Yol Sen; more generally, the Committee requests the Government to take the necessary measures so that members of a union which may be affected by the modification of the list of branches of activity will have the right to be represented by the union of their choice in accordance with Article 2 of the Convention,*

- (iii) *amend section 16 of Act No. 4688 so as to ensure that trade union office is not terminated 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.*

*Article 3. 1. The detailed provisions of Acts Nos 4688, 2821 and 2822 in respect of the internal functioning of unions and their activities.* The Committee notes that the statement of the Government representative to the Conference Committee reiterates previously provided information according to which the rationale behind the detailed provisions of Acts Nos 4688, 2821 and 2822 is to ensure the democratic functioning of the unions and to protect the rights of their members while draft Bills Nos 2821 and 2822 will make legislation less detailed.

The Committee notes the comments made by the KESK and ITUC with regard to repeated interference by the authorities into the statutes of the KESK and five of its affiliates (Egitim Sen, Kültür-Sanat Sen, ESM, Haber-Sen and SES); the Government interventions aim to make these trade unions amend their aims as stated in their statutes, with regard to terms such as “collective bargaining”, “collective agreement”, “job security”, “collective dispute” which are being considered as contrary to Act No. 4688; in 2006, Egitim Sen had to amend its statutes by eliminating reference to “the right to receive education in one’s mother tongue”, in order to avoid being dissolved. The Government indicates that this is in conformity with section 6 of Act No. 4688, which provides that in case of divergencies between the law and the statutes of trade unions, the relevant governorship should request the union to correct its statutes.

The Committee recalls the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2366 (342nd Report, paragraphs 906–917) concerning the statute of Egitim Sen. In particular, while noting that limits may be placed on the right of trade unions to draw up their constitutions and rules in full freedom where the manner in which they are expressed may imminently jeopardize national security or the democratic order, the Committee on Freedom of Association expressed serious concerns that references in a union’s by-laws to the right to education in a mother tongue had given and could give rise to the call for dissolution of a trade union. The Committee emphasizes that trade unions should have the right to include in their statutes the peaceful objectives that they consider necessary for the defence of the rights and interests of their members. It recalls that legislative provisions which go beyond formal requirements may hinder the establishment and development of organizations and constitute interference contrary to *Article 3(2)* of the Convention (see General Survey of 1994, op. cit., paragraphs 110 and 111). The legislation may oblige unions to adopt provisions on various issues but should not dictate the contents of these provisions. Details could always be provided in guidelines attached to the Acts that the unions would nonetheless remain free to follow. ***The Committee requests the Government to cease its interference in the statutes of the KESK and its affiliates and to indicate in its next report the outcome of the court proceedings pending on this issue. It also once again requests the Government to indicate in its next report the measures taken or contemplated with a view to amending the detailed provisions of Acts Nos 4688, 2821 and 2822 so as to avoid interference with the internal functioning of unions and their activities.***

*2. The removal of union executive bodies in case of non-respect of requirements set out in the law which should be left to the free determination of the organizations (section 10 of Act No. 4688).* The Committee notes that the statement of the Government representative to the Conference Committee did not provide any new information in this respect. It once again emphasizes that workers’ organizations may organize their administration and activities without any interference by public authorities on grounds which are incompatible with *Article 3*. ***The Committee once again requests the Government to indicate in its next report the measures taken or contemplated to amend section 10 of Act No. 4688 to enable workers’ organizations to determine freely whether union officials may remain in their post during their candidacy or election in local or general elections.***

*3. The right to strike in the public service (section 35 of Act No. 4688).* The Committee recalls that section 35 of Act No. 4688 makes no mention of the circumstances in which strike action may be exercised in the public service and that, according to the statement of the Government representative to the Conference Committee, a constitutional amendment is required for the review of restrictions on the right to strike of public servants; however, the Government is planning to launch a personnel reform in the public sector whereby “public servants” in the narrow sense of the term, i.e. those exercising authority in the name of the State, would be defined first and then carefully distinguished from other public employees; work on this reform programme was continuing as a priority. The Committee underlines 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 (see General Survey, op. cit., paragraphs 158 and 159). Where the right to strike is prohibited or limited in a manner compatible with the Convention, compensatory guarantees should be afforded to public servants, such as mediation and conciliation procedures or, in the event of deadlock, arbitration with sufficient guarantees of impartiality and rapidity (see General Survey, op. cit., paragraph 164). ***The Committee requests the Government to indicate in its next report the measures taken, including the possible personnel reform in the public sector, so as to bring section 35 of Act No. 4688 into conformity with the***

above. Furthermore, the Committee requests once again the Government to transmit a copy of the new draft modifying Act No. 4688.

4. *The right to strike under Act No. 2822.* The Committee recalls that it has commented on several occasions on certain provisions of Act No. 2822 concerning the right to strike and which are incompatible with the Convention: section 25 prohibiting strikes for political purposes, general strikes and sympathy strikes (furthermore, article 54 of the Constitution, which contains similar prohibitions further prohibits occupation of work premises, go-slow strikes and other forms of obstruction); section 48 placing severe limitations on picketing; sections 29 and 30 prohibiting strikes in many services which cannot be considered to be essential in the strict sense of the term and section 32 under which compulsory arbitration at the request of any party may be imposed in the services where strikes are prohibited; sections 27 (referring to section 23) and 35 providing for an excessively long waiting period before a strike can be called; sections 70–73, 77 and 79 providing for heavy sanctions, including imprisonment, for participating in “unlawful strikes” the prohibition of which, however, is contrary to the principles of freedom of association. In this respect, the Committee notes that the statement of the Government representative to the Conference Committee reiterates previously provided information according to which some of the restrictions on the right to strike, such as those mentioned in section 25, require a constitutional amendment; however, several restrictions will be lifted with the amendment of Act No. 2822; for instance, in addition to the revision of the list of activities where strikes may be prohibited (noted above), the waiting period for the staging of a strike has been shortened in the draft bill amending Act No. 2822, to a maximum of 30 days or 45 days if the parties have recourse to mediation. **The Committee once again requests the Government to indicate in its next report the tangible progress made in amending the above provisions so as to bring them in line with the Convention.**

**Noting that the Conference Committee requested the Government to accept a high-level ILO mission with a view to assisting it in rapidly taking the necessary measures to bring its legislation into conformity with the Convention, the Committee trusts that this mission would take place in the near future and that it will be able to assist the Government in bringing its law and practice into full conformity with the Convention.**

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

## Uganda

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (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 4 of the Convention. Promotion of collective bargaining.* The Committee notes that section 7 of Labour Unions Act No. 7 of 2006 (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.**

*Comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation).* The Committee notes the comments of the ICFTU dated 10 August 2006. The ICFTU’s comments concern legislative issues previously raised by the Committee and problems regarding the application of the Convention in practice, including the refusal to recognize and negotiate with trade unions in the hotel, textile, construction and transport sectors. In this regard, the Committee takes note of the Government’s indication that there have been positive developments concerning the attitude of employers towards union recognition and negotiations with unions following the adoption of the Labour Unions Act and other new legislation, including Employment Act No. 6 and Labour Disputes (Arbitration and Settlement) Act No. 8. A number of employers, including employers in the textile and hotel industries, are negotiating recognition agreements with unions, and of these employers several are in the final stages of concluding collective bargaining agreements. The Government adds that a number of sensitization workshops have been led by workers’ and employers’ organizations and the Minister of State for Labour, Employment and Industrial Relations is undertaking a tour of some industries, in which about 20 hotels will be visited with a view to, inter alia, create awareness on the labour laws and encourage employers to recognize unions. The Committee appreciates this information. **It requests the Government to continue to pursue its endeavours to promote collective bargaining in the abovementioned industries and to keep it informed of 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.*

## **Bolivarian Republic of Venezuela**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1982)**

The Committee notes the report and the discussion on the application of the Convention held in the Conference Committee in 2007. It also notes the comments of the International Trade Union Confederation (ITUC), dated 28 August 2007, and of the International Organisation of Employers (IOE), dated 25 September 2007. Finally, the Committee notes the conclusions of the Committee on Freedom of Association relating to the cases presented by national and international organizations of workers (Case No. 2422) and of employers (Case No. 2254). In its previous observation, the Committee noted the conclusions of the high-level mission which visited the country in January 2006.

#### **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 made the following comments:

The Committee previously noted that a Bill to amend the Basic Labour Act took account of 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 (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 noted that the authorities of the Ministry and of the legislative authority support the position set out in this provision of the Bill and that, in practice, trade unions have now held elections without the participation of the National Electoral Council. The Committee also noted in its previous comments 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". The Committee hoped that the Parliament 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 executive bodies of trade union organizations, which accords a preponderant role to the CNE in the various stages of such elections, to be amended or repealed;
- certain provisions of the Regulations of the Basic Labour Act, dated 25 April 2006, might restrict the rights of trade union organizations and employers' organizations: (1) the necessity for the trade union organization(s) to represent the majority of the workers to be able to engage in collective bargaining (section 115, sole paragraph, of the Regulations); and (2) the possibility of compulsory arbitration in essential public services (section 152 of the Regulations). The Committee notes the Government's indication in its report that where there is no majority trade union, the minority unions can negotiate jointly;
- the Committee also noted the criticisms made by the ICFTU concerning resolution No. 3538 of February 2005 and observes that this issue was examined in March 2006 in Case No. 2411 by the Committee on Freedom of Association, which made the following recommendation (see 340th Report, paragraph 1400): "(b) Regarding the allegations relating to the Ministry of Labour, resolution 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 identity, place of residence and signature, the Committee considers that the confidentiality of trade union membership should be ensured and recalls that it would be advisable to establish, between trade unions, a code of conduct governing the conditions in which membership data is to be supplied, with the use of appropriate means of personal data processing, with guarantees of absolute confidentiality." *The Committee requests the Government to adopt measures in this respect.*
- a draft reform of the Penal Code which establishes sentences of imprisonment of up to 18 years for the interruption of operations in basic or strategic state enterprises (the Government indicates in its report that no reform of the Penal Code is envisaged).

The Committee notes the Government's indication in its report that: (1) insinuations of violations of Convention No. 87 are undermined by the number of trade union organizations that are established (300 over the past six months) and the number of collective agreements approved (311 over the past six months); (2) the Bill to reform the Basic Labour Act continues to be on the legislative agenda, has the consensus support of the social partners and gives effect to the comments of the Committee of Experts, but a constitutional reform is currently being carried out in the country (in which the observations of the national and international trade union movement can be taken into account) which may resolve certain issues raised by the Committee (for example, those relating to the CNE); the inclusion in the above Bill will be considered of the possibility of re-electing the executive boards of trade union organizations, by determining the interpretation of the "changeover" referred to in article 21 of the Constitution; non-intervention in trade union elections is applied in practice and resolution 13 of the Ministry reaffirms the optional nature of the intervention of the CNE; (3) the Government hopes that the CNE will organize and coordinate action to simplify its rules, thereby preventing possible misunderstandings between the social partners; (4) the new Regulations of the Basic Labour Act include improvements in relation to trade union elections intended to prevent delays in elections; isolated cases of alleged violations have been presented as the general pattern and the Government has provided its observations in this respect to the Committee on Freedom of Association (Case No. 2422); and (5) it hopes to continue receiving the technical assistance of the ILO on issues of interest that so require and wishes to undertake a precise analysis of the recommendations of the high-level mission with a view to achieving continuing improvements in the application of Convention No. 87.

***Taking into account the gravity of the restrictions which persist in the legislation with regard to freedom of association and the freedom to organize, the Committee once again requests the Government to take measures to accelerate the examination by the Legislative Assembly of the Bill to reform the Basic Labour Act and hopes that the reform of the Constitution will provide an occasion for the CNE to cease interfering in trade union elections (Case No. 2422 examined by the Committee on Freedom of Association is a clear example of interference) and that the statute for the election of (trade union) and national executive bodies will be repealed. 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 and to amend the resolution of the Ministry of Labour, dated 3 February 2005, as indicated above.***

### **Shortcomings in social dialogue**

In successive observations in recent years the Committee has identified important deficiencies in social dialogue. The CSI, the Venezuelan Workers Confederation (CTV), CGT and the Venezuelan Federation of Chambers of Commerce and Manufacturers Associations (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. Moreover, there are no structures for such dialogue and the Government does not convene the tripartite commission envisaged in the Basic Labour Act.

The Committee notes the Government's statements that: (1) participation and social dialogue have been broadened, with the base being extended and all actors included (without excluding FEDECAMARAS and the CTV); meetings, consultations and round tables have been organized; the Government refers, for example, to the labour standards meeting for the construction industry, the draft collective agreement in the oil sector, the Framework Agreement on Co-responsibility for Industrial Transformation, the meetings with the authorities of the currency administration system, the rounds of negotiations to manage state procurement, the modalities of dialogue established by the Basic Act on prevention, working conditions and environment (consultation with the most representative organizations and inclusion in the executive board of the National Institute for Prevention and Occupational Health and Safety of the spokespersons of employers' and workers' organizations and cooperatives) and the (bipartite) occupational safety and health committee; (2) the Regulations of the Basic Labour Act provide for the establishment of a National Social Dialogue Table, which opens the possibility for the discussion of issues of great significance, such as the minimum wage; (3) the Government values the contribution of the CTV and certain spokespersons of the CGT in terms of social dialogue; and (4) certain organizations which in the past enjoyed long-standing privileges are now alleging favouritism when they see any type of favouritism or exclusion abolished in a context of respect for political, ideological or religious freedom.

The Committee notes that, at its session in November 2007, when examining Case No. 2554, the Committee on Freedom of Association referred to the need to hold true consultations and emphasized 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 preceded by full and detailed consultations with the appropriate independent and most representative organizations of workers and employers. The Committee on Freedom of Association also requested the Government to ensure that any legislation adopted concerning labour, social and economic issues within the framework of the enabling Act be subject to real, in-depth consultations with the independent and most representative employers' and workers' organizations, while attempting as far as possible to find shared solutions [see 348th Report, para. 1325].

The Committee of Experts shares these conclusions and draws the Government's attention to the importance that the National Social Dialogue Table envisaged in the new reform of the Regulations of the Basic Labour Act is based on objective and pre-established criteria of representativeness. ***The Committee invites the Government to request the technical assistance of the ILO for the establishment of this body and to ensure that the views of the most***

*representative organizations are duly taken into account in the attempt as far as possible to reach mutually acceptable solutions.* In this context, 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, as indicated by the Conference Committee in 2007, from any form of interference and complies with *Article 3 of the Convention*. ***The Committee requests the Government to keep it informed of developments in social dialogue, its outcome and the establishment of the Dialogue Table which, it strongly hopes, will be established in the very near future.***

#### **Other matters**

With regard to the restrictions on the freedom of movement of certain trade union and employers' leaders, the Committee notes that the Government's statements reiterate the information provided previously and that the employers' leader Albis Muñoz (under trial) did not request authorization from the judiciary sufficiently in advance to be able to attend the ILO Conference in 2007. The Committee refers to the conclusions of the Conference Committee and regrets this absence of authorization.

The Committee notes that a number of trade union organizations, including certain federations, have not held their trade union elections despite the expiry of the period for which they had elected their executive bodies. The high-level mission referred to a profound and manifest misunderstanding among the social partners concerning the functions of the CNE. ***The Committee reiterates the offer of technical assistance made by the high-level mission to trade union federations.*** The Committee emphasizes the importance of holding such elections since, as indicated in the report of the high-level mission, any delay in the procedures is accompanied by the non-recognition of trade unions for the purposes of collective bargaining.

***Moreover, the Committee reiterates that, as proposed by the high-level mission, the Government should conduct investigations into the alleged actions of certain middle-ranking officials in relation to the allegations of favouritism and partiality with regard to certain employers' and workers' organizations.***

***The Committee hopes that the Government will take measures to ensure full compliance with the Convention in relation to the various matters raised in this observation and it requests the Government to provide information in this regard.***

***Finally, the Committee requests the Government to provide its comments on the observations made by the IOE and the ITUC on the application of the Convention.*** Nevertheless, it wishes to recall that one of the issues referred to by the IOE was addressed by the Committee on Freedom of Association at its session in November 2007 and relates to the allegations that a governmental mob forced its way into the head office of FEDECAMARAS, daubing graffiti, damaging property and making threats.

The Committee expresses deep concern, recalls the gravity of the allegations and emphasizes that a movement of trade unions or employers can only develop where fundamental human rights are respected and in a climate free of violence of any kind. ***The Committee recalls that the Conference Committee requested the Government to take measures to investigate this occurrence so that those responsible could be punished and similar events did not occur in future and it requests the Government to provide information in this respect.***

***The Committee notes the CTV's comments concerning the draft constitutional reform and requests the Government to inform it of its impact on the application of Conventions Nos 87 and 98.***

## **Zimbabwe**

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2003)**

The Committee notes the discussion held on the application of the Convention in the Conference Committee in June 2007 and, in particular, that it had decided to mention the case of Zimbabwe in a special paragraph of its report. The Committee further notes the Government's indication that the Government of Zimbabwe is prepared to host the Office with a view to receiving technical assistance to deal with the issues raised by the Committee. The Committee regrets that the Government refuses to accept the high-level technical assistance mission in the terms requested by the Conference Committee in June 2006. ***The Committee expresses the hope that the high-level technical assistance mission will be undertaken in the very near future.***

The Committee also notes Cases Nos 1937, 2027 and 2365 examined by the Committee on Freedom of Association concerning serious allegations of violation of trade union rights, including allegations of arrest, detention and assaults of trade union leaders and members, attacks on trade union premises, deportation of and refusal of entry to foreign trade unionists, etc. (see 344th Report).

The Committee notes the Government's reply to the comments of the Zimbabwe Congress of Trade Unions (ZCTU) dated 1 September 2006. The Committee notes that the Government disagrees with the ZCTU's allegation that it

continued to enact legislation meant to paralyse the right to freedom of association and states that all laws in Zimbabwe are subject to a transparent and democratic law-making process.

As regards the matters raised concerning the Public Order and Security Act (POSA), in the Government's opinion, it serves no purpose to continue debating this issue as it was exhaustively dealt with in the Government's various communications to the ILO. *Referring to its previous request to take the necessary measures to ensure that the POSA is not used to infringe upon the right of workers' organizations to express their views on the Government's economic and social policy, the Committee urges the Government to ensure that no other charges are pending against trade unionists under the POSA for the exercise of legitimate trade union activity.*

The Government further states that the ZCTU's allegation that the Criminal Law (Codification and Reform) Act of 2006 criminalizing public meetings and gatherings is misleading. According to the Government, the penal sanctions provided for by this Act relate to illegal gatherings and public meetings; the citizens of Zimbabwe are free to exercise their constitutional rights. The Committee notes from Case No. 2365 examined by the Committee on Freedom of Association that a number of trade union leaders and members have been charged under the Criminal Law (Codification and Reform) Act in connection with their participation in the demonstration in September 2006. *The Committee agrees with the findings and recommendations of the Committee on Freedom of Association and urges the Government to drop the charges brought for reasons connected to their trade union activities against trade unionists and to abstain from resorting to measures of arrest and detention of trade union leaders or members for reasons connected to their trade union activities.*

With regard to the arrest of Mr W. Chibebe in August 2006, the Government indicates that Mr Chibebe has a pending court case on allegations of assaulting a fellow worker (police officer) on duty during the currency reform exercise. The Committee notes from the examination of Case No. 2365 that the Committee on Freedom of Association concluded that a number of procedural irregularities respecting the case against Mr Chibebe took place. *The Committee therefore requests the Government to provide full and detailed information respecting the arrest of Mr Chibebe and to transmit the text of any court judgment rendered in this regard.*

The Committee notes that by its communication dated 28 August 2007, the International Trade Union Confederation (ITUC) submitted further comments concerning the application of the Convention in law and in practice. The Committee notes that the ITUC comments refer to the legislative issues already raised by the Committee and to serious allegations concerning arrests, assaults and police violence against trade union leaders and members. In this respect, the Committee has, on numerous occasions, stressed the interdependence between civil liberties and trade union rights emphasizing that a truly free and independent trade union movement can only develop in a climate of respect for fundamental human rights. *The Committee requests the Government to provide its observations thereon.*

*The Committee requests the Government, in the context of the regular reporting cycle, to send for examination at the Committee's next session, to be held in November–December 2008, its comments on all the issues relating to the legislation and the application of the Convention in practice raised in its previous observation and direct request (see 2006 direct request, 77th Session).*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)**

The Committee notes the Government's reply to the comments of the Zimbabwe Congress of Trade Unions (ZCTU) dated 1 September 2006. With regard to the ZCTU comment that collective agreements are subject to governmental approval and need to be published as a prerequisite for enforcement, the Government refers to its previous report in which it had indicated that it would initiate consideration of the Committee's comments in respect of the relevant sections of the Labour Act in the context of the ongoing labour law reform. The Government further indicates that collective agreements are published to ensure that they become legally enforceable as statutory instruments so as to protect the interests of the parties to the collective agreement.

With regard to the ZCTU allegation that civil servants continue to be denied the right to bargain collectively, the Government reaffirms its previous position that the Public Service Act is being amended to ensure that it complies with the international labour standards and provisions of the Labour Act. However, civil servants are currently enjoying collective bargaining within the auspices of the civil service Joint Negotiating Council. It was through the deliberations of this council that civil servants were recently awarded an increase in transport and housing allowances.

With regard to the alleged interference by the Minister in the collective bargaining process by refusing to approve collective agreements, particularly in the agricultural sector where, the Minister, who is a new farmer and an interested party, considered that the agreed salaries were beyond the reach of the new farmers, the Government indicates that the real reason for refusing to register the collective agreement in question is its flaws both in content and process. The Government explains that the agreement was negotiated for certain categories of workers in the sector, leaving out other workers covered by the National Employment Council. Furthermore, the negotiating process has excluded a significant percentage of the employers in the sector, i.e. black indigenous farmers who now constitute the majority. Accordingly, the Minister referred the agreement to the parties for renegotiation with a view to ensuring total coverage of all workers in the sector and ensuring inclusion of the majority of the employers in the sector. *The Committee requests the Government to provide detailed information in this respect in its next report, as well as a copy of the collective agreements in question.*

The Committee notes that by its communication dated 28 August 2007, the International Trade Union Confederation (ITUC) submitted further comments, which refer to the issues of law and practice pertaining to the Convention which the Committee is already examining. *The Committee requests the Government to provide its observations thereon.*

*The Committee requests the Government to provide its comments on all issues relating to the legislation and application of the Convention in practice raised in its previous observation (see 2006 observation, 77th Session), which it will examine in 2008, in the context of the regular reporting cycle.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 11** (Tajikistan, Uganda, Zambia); **Convention No. 87** (Angola, Australia, Bosnia and Herzegovina, Burkina Faso, Burundi, Cambodia, Cape Verde, China: Macau Special Administrative Region, Colombia, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Egypt, Eritrea, Fiji, France, France: French Southern and Antarctic Territories, Gabon, Gambia, Georgia, Ghana, Grenada, Israel, Kiribati, Kyrgyzstan, Malawi, Mauritius, Papua New Guinea, Philippines, Russian Federation, Saint Lucia, Sierra Leone, Swaziland, The former Yugoslav Republic of Macedonia, Turkey, Uganda); **Convention No. 98** (Angola, Armenia, Australia, Belize, Benin, Bosnia and Herzegovina, Brazil, Chad, China: Macau Special Administrative Region, Congo, Cyprus, Democratic Republic of the Congo, Fiji, France, France: French Southern and Antarctic Territories, New Caledonia, Gabon, Hungary, Indonesia, Ireland, Kiribati, Kyrgyzstan, Mongolia, Poland, Rwanda, Saint Lucia, Sao Tome and Principe, Senegal, Tajikistan, United Republic of Tanzania, Uzbekistan); **Convention No. 135** (Armenia, Bosnia and Herzegovina); **Convention No. 141** (Albania, Belize, Burkina Faso); **Convention No. 151** (Armenia, Belize); **Convention No. 154** (Armenia, Belize, Kyrgyzstan, Saint Lucia).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 11** (Estonia, Swaziland); **Convention No. 87** (Malta); **Convention No. 98** (Algeria, Argentina, Belgium, Israel, Malawi, Malta, United Kingdom: Montserrat); **Convention No. 135** (Azerbaijan).

## Forced Labour

### Algeria

#### **Forced Labour Convention, 1930 (No. 29) (ratification: 1962)**

*Article 2(1) of the Convention. Civic service.* Since 1986, the Committee has been drawing the Government's attention to the incompatibility with the Convention of sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 on civic service, as amended and supplemented by Act No. 86-11 of 19 August 1986, under which it was possible to require persons who had completed a course of higher education or training to perform a period of civic service of from two to four years in order to obtain employment or exercise an occupation. The Committee notes that Ordinance No. 06-06 of 15 July 2006, approved by Act No. 06-15 of 14 November 2006, has lowered the minimum length of civic service from two years to one year. Consequently, the length of civic service may now vary, depending on the training and the geographical area, from one to four years instead of the former two to four years. The Committee points out that this reduction in length of the minimum civic service in no way changes the fact that the service is exacted under the menace of a penalty within the meaning of *Article 2(1)* of the Convention, and therefore amounts to forced labour under the terms of the Convention.

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 submitted to the civic service. It represents the contribution of these persons to the economic, social and cultural development of the country. According to the Government, persons covered by 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, as well as 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 covered by civic service are assigned exclusively to the specialized branch or discipline in which they were trained.

The Committee took due note of these explanations. However, it also pointed out that under sections 32 and 38 of the Act, refusal to perform civic service and the resignation of the person concerned without acceptable grounds result in their prohibition from exercising an activity on their own account, and that any violation is punishable under section 243 of the Penal Code. Similarly, under sections 33 and 34 of the Act, before they engage workers, all private employers are required to satisfy themselves that applicants are not covered by civic service or can produce documentation proving that they have discharged it, and that any private employer knowingly employing a citizen who has evaded civic service is liable to imprisonment and a fine. Therefore, although the persons liable to civic service benefit from working conditions (remuneration, seniority, promotion, retirement, etc.) similar to those of regular public sector workers, they discharge this service under a menace because, in the event of refusal, they are denied access to any professional self-employed activity or to any employment in the private sector, as a result of which 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.

The Committee again reiterates that forced labour means any work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. ***Referring once again to the explanations provided in paragraphs 55 to 62 of its 1979 General Survey on the abolition of forced labour, the Committee trusts that the necessary measures will be taken to repeal or amend the provisions in question in the light of Conventions Nos 29 and 105 and that the Government will soon be able to report on the measures adopted in this respect.***

The Committee further notes 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 in regulations. The Committee refers the Government to paragraph 56 of its General Survey of 1979 on the abolition of forced labour in which it pointed out 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. ***The Committee expresses the hope that the Government will take this into account, and 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. Please also indicate whether, in practice, persons subject to the civic service requirement perform such service in private sector health establishments, and provide 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 working conditions of the persons concerned.***

*Article 2(2)(a). National service.* For a number of years, the Committee has been referring to Ordinance No. 74-103 of 15 November 1974 issuing the National Service Code, under which conscripts are required to take part in the running of various sectors of the economy and the administration. It has also referred to the Order of 1 July 1987, under which conscripts, after three months of military training, must serve in priority sectors of national activity, and particularly as

teachers. The Committee noted that they are further required to perform civic service for a period of between one and four years, as explained above. The Committee recalled that, under the terms of *Article 2(2)(a)* of the Convention, compulsory military service is excluded from the scope of the Convention only where conscripts are assigned to work of a purely military character.

The Committee notes the information on this matter sent by the Government in its last report to the effect that the civic form of national service has not been used since 2001. It notes the Government's statement that this de facto suspension will be reflected in law as soon as the reform of the National Service Code is placed on the agenda. ***The Committee requests the Government to send 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 addressing a request on other matters directly to the Government.

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)**

*Article 1(a) of the Convention. Punishment for expressing political views.* 1. For a number of years the Committee has referred to two provisions of the Associations Act, No. 90-31 of 4 December 1990, that allow the imposition of sentences of imprisonment involving the obligation to work in circumstances which are covered by the Convention.

- Under section 5 of the Act, an association's legal status is automatically invalidated if its objectives are contrary to the established institutional system, public order or offend against morals or the laws and regulations in force.
- Section 45 provides that 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 a prison term ranging from three months to two years involving the obligation to work pursuant to sections 2 and 3 of the Inter-Ministerial Order of 26 June 1983 issuing arrangements for the use of prison labour by the National Office for Educational Work.

The Committee notes that, pursuant to section 173 of Act No. 05-04 of 6 February 2005 issuing the Code on the prison system and the social integration of prisoners, the provisions implementing Ordinance No. 72-02 of 10 February 1972 remain in force on a transitional basis until the promulgation of the texts implementing Act No. 05-04 of 6 February 2005. ***The Committee therefore asks the Government to indicate whether texts have been adopted under the said Act and whether the Inter-Ministerial Order of 26 June 1983 has been repealed. It asks the Government to send copies of the abovementioned implementing provisions.***

The Committee also notes that some provisions of Act No. 05-04 of 6 February 2005 are likely to have consequences with regard to the application of the present Convention. Indeed, under the terms of section 96 of the Act, in the context of training and also rehabilitation and social integration, the prisoner may be required, by the director of the prison and further to an opinion from the Committee for the Enforcement of Sentences, to perform useful work compatible with his state of health and his physical and mental capacity. Under section 100 of the Act, persons whose convictions are definitive may be employed as part of a team on external worksites to do work for public institutions or establishments. This section also allows prison labour to be hired to private companies which take part in the execution of public interest works. Sections 109 to 111 state that prisoners may be placed in low security penal institutions which take the form of agricultural, industrial or handicraft establishments, centres providing services or performing work in the public interest, which entail convicts working and being lodged on site. Hence, pursuant to these provisions and the abovementioned provisions of Act No. 90-31 of 4 December 1990, compulsory labour may be imposed on persons convicted for expressing political views or views ideologically opposed to the established political, social or economic system, which is contrary to the provisions of the Convention.

The Committee notes the information supplied by the Government in its latest report to the effect that the penalty laid down by section 45 of Act No. 90-31 of 4 December 1990 concerns persons who contravene the legal provisions concerning the formation of associations, and not those who express political views, which may be expressed freely provided they comply with the legislation in force. It also notes the Government's statement that there is no provision in Algerian law which obliges prisoners to work. The Committee notes, however, that section 45 of Act No. 90-31 of 4 December 1990 states that anyone who manages, administers or actively participates in an association which 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 a prison term ranging from three months to two years. The Committee notes that section 2 of the Inter-Ministerial Order of 26 June 1983 provides that prisoners, in the context of their rehabilitation, training and social promotion, are required to perform useful work compatible with their health and with order, discipline and security. Moreover, prisoners may be required to work pursuant to the abovementioned provisions of Act No. 05-04 of 6 February 2005. ***The Committee therefore expresses the hope once again that the Government will take the necessary steps in the near future to bring its legislation into conformity with the Convention, either by amending section 45 of Act No. 90-31 of 4 December 1990 or by explicitly exempting persons convicted under this section from compulsory labour. The Committee also asks the Government to indicate whether any persons have been sentenced to imprisonment under section 45 of Act No. 90-31 of 4 December 1990, including the obligation to work pursuant to the abovementioned***

*provisions of Act No. 05-04 of 6 February 2005 and the Inter-Ministerial Order of 26 June 1983. It asks the Government to send copies of any relevant judicial decisions.*

2. In its previous comments, the Committee requested the Government to provide information on the application in practice to section 87bis of the Penal Code (Ordinance No. 95-11 of 25 February 1995) on “terrorist or subversive acts”, which provides for the imposition of sanctions of imprisonment involving compulsory prison labour. It noted the information supplied by the Government that section 87bis of the Penal Code deals with acts which, through the use of violence, target the security of the State, territorial integrity, national unity, stability and the normal working of institutions. The Committee notes that the Government indicates in its latest report that acts having a peaceful objective do not come within the scope of section 87bis.

The Committee observes, however, that the very general terms of section 87bis of the Penal Code – hindering traffic or freedom of movement on 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 – may enable peaceful acts to be punished. The Committee already observed in its previous comments that actions which are non-violent but express opposition to the established political system may therefore come under the scope of section 87bis, and the imposition of prison labour on persons convicted under such provisions is contrary to *Article 1(a)* of the Convention.

***The Committee therefore urges the Government to take the necessary measures 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). Punishment 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 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 is to be organized. It observed that the list is very broad and includes services such as banking and radiocommunications/broadcasting, which, according to the Committee on Freedom of Association, do not constitute essential services in the strict sense of the term (see paragraph 587 of the 2006 *Digest of decisions and principles of the Freedom of Association Committee*. See also the Committee of Experts’ General Survey on freedom of association and collective bargaining, 1994, paragraphs 159–160). The list in sections 37 and 38 of the Act also includes court registry services.

The Committee furthermore 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.

It notes that 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 a term of imprisonment ranging from eight days to two months and/or a fine of 500 to 2,000 dinars.

The Committee notes the Government’s information in its report that the imposition of any penalty on workers taking part in a strike is prohibited. It also notes the Government’s statement that the organisation 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 recalls that penalizing participation in strikes through imprisonment including the obligation to work is contrary to the present provisions of the Convention. It therefore requests the Government to take the necessary measures to ensure that no worker can be sentenced to a term of imprisonment including the obligation to work and to continue to provide information on the application in practice of sections 41, 43 and 51(1) of Act No. 90-02, specifying in particular the number of persons convicted and supplying copies of the relevant court decisions.***

The Committee is also addressing a direct request to the Government concerning other points.

## Argentina

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1950)**

#### **Articles 1(1), 2(1) and 25 of the Convention**

The Committee notes the comments on the application of the Convention made in 2006 by the General Confederation of Labour of the Republic of Argentina (CGT) and the International Trade Union Confederation – ITUC (formerly the International Confederation of Free Trade Unions – ICFTU). The allegations relate to the trafficking of

persons for labour and sexual exploitation, the direct participation of public officials in trafficking, the slowness and ineffectiveness of the judicial system and the absence of specific legislation on trafficking which makes it impossible to combat this practice effectively.

The Committee notes the Government's detailed reply to the comments made by the CGT and the ITUC. The Government indicates that it is deeply concerned by the problem raised by the two trade union organizations and has provided information on the policies that it is implementing to address the problem.

#### ***Trafficking in persons for labour exploitation***

The National Apparel and Allied Workers' Federation (FONIVA) and the Apparel and Allied Workers' Union (SOIVA), as member organizations of the CGT, informed the latter of the existence of forced labour practices in the textile sector. According to these organizations, "as a result of the death of four children and two workers from Bolivia in a clandestine workplace, a great number of textile workshops were discovered in the city of Buenos Aires in which illegal workers were engaged, mostly of Bolivian nationality. It was found that they had been recruited in Bolivia, principally in the cities of La Paz and Potosí. Based on the promise of a work contract, the workers are advanced money for their journey and once in Argentina are installed in precarious accommodation, which may be located at the workplace, and they work to pay off their debt for the journey. The conditions of their work and recruitment could be classified as new forms of violations of the fundamental Conventions on forced labour and be related to the phenomenon of the trafficking of persons in view of the manner of their recruit."

According to the comments provided by the International Trade Union Confederation (ITUC), Bolivian men, along with their families, have also been trafficked for labour exploitation in garment factories in Argentina. Trafficked people have been identified in many provinces of Argentina including, Buenos Aires, Neuquén, La Rioja, Entre Ríos, Córdoba, Río Negro and Tucumán. In October 2005, 17 Bolivians were released from a textile factory in Buenos Aires, where they were forced to work up to 17 hours a day, the employer took away their documents (including locking them into the factory) in order to keep them working against their will. Food was only provided to employees, meaning adults had to share their food with their children and their children were prevented from going to school or to the doctor because it would "interfere with production". The Office of the Ombudsman of the city of Buenos Aires estimates that thousands of people could be working under conditions of forced labour in and around Buenos Aires. On 30 March 2006, a fire broke out in a textile factory where around 60 Bolivians were found to have been exploited for forced labour. Six people were killed, including four children. A programme of inspections was ordered, which resulted in the closure 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 and some 200 of those employ slave labour. According to the ITUC, the phenomenon is not recent and it refers in its comments to document E/CN.4/2001/78 of the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, according to whom "police discovered a group of 56 Bolivian children and young persons between 9 and 20 years of age being held in captivity .... They were kept under armed guard" and "allowed to eat only once a day". They were working in four clandestine sweatshops around the La Matanza area. They had been brought into Argentina, hidden in trucks.

#### ***Government's reply on allegations of trafficking of Bolivian workers for labour exploitation***

The Government indicates that in 2006 the Ministry of Labour, Employment and Social Security carried out 1,501 inspections in the context of Act No. 12713, respecting homework, and 1,188 inspections in the context of the National Labour Regulation Plan. The Government of the city of Buenos Aires brought the corresponding charges and, where undeclared workers were found, the cases were forwarded to the National Directorate of Migration of the Ministry of the Interior. The regularization of identity documents is a priority action undertaken jointly by the Ministry of the Interior (*Patria Grande* programme) and the National Directorate of Migration. For the regularization of their employment, there is close collaboration with the Directorate of the Labour Inspectorate of the Ministry of Labour, Employment and Social Security. The Committee notes that in one case charges have been brought for the offence of reduction to a condition equivalent to slavery. The Committee further notes that, according to the CGT in its comments, problems have been identified in the inspection systems.

***The Committee notes this information and observes that the Government's report does not contain data on the number of instances in which charges were brought in cases in which the labour inspectorate found situations in violation of the penal and labour legislation, on the effect given to such charges and any penalties imposed. The Committee requests the Government to provide this information with its next report, and also to provide information on the legal action initiated relating to the offence of reduction to slavery and, if the case has been concluded, a copy of the ruling. The Committee further requests the Government to provide information on any measures adopted to strengthen the inspection system.***

#### ***Transnational and domestic trafficking of women and girls for sexual exploitation***

On the subject of international trafficking, the ITUC indicates that over the past ten years Argentina has been a destination for the trafficking of women and girls for sexual exploitation from the Dominican Republic, Paraguay and

Brazil. Reference is made 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 18, as well as the information provided by the Paraguayan Vice-Consul in June 2005 concerning over 100 reports from parents of daughters who had disappeared and were believed to have been trafficked.

Further, according to the ITUC, Argentinian women and girls are also trafficked for sexual exploitation abroad. Many of them are from Misiones, Tucumán, La Rioja, Chaco and Buenos Aires. Spain and Brazil are the principal destinations. Coercion and deception are commonly used, although there are also unusually high numbers of kidnappings by gangs involved in the trafficking in persons. In such cases, overt violence and the physical confinement of the women are used to prevent them escaping. The example is given of 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 the women rescued included some 17 women from Argentina who were forced into prostitution in Bilbao, Burgos and Vigo in Spain.

Around 70 cases have been filed in Tucumán over the past five years relating to women and girls who have disappeared and are presumed trafficked. Furthermore, in May 2005, the Office for Integrated Assistance to Victims of Crime (OFAVI) noted that assistance was being provided to two young women from Tucumán who had been kidnapped and forced into prostitution in La Rioja.

The Committee notes that the Government's report did not address these specific and very serious allegations in relation to either the trafficking of women and girls from the Dominican Republic, Paraguay and Brazil for exploitation, nor does it address the allegations concerning the trafficking networks of Argentinian women and girls abroad. ***The Committee requests the Government to indicate whether any investigation has been undertaken in respect of the specific allegations and, if so, the nature of investigation and any specific action taken in respect of the perpetrators.***

#### ***Involvement of public officials in trafficking. Corruption of the police force***

The ITUC also alleges corruption in the police force and the direct participation of police officers in criminal activities related to the trafficking in persons. The example is given 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 *Cuartel Quinto* in Moreno, where the complaint by the three women who had managed to escape was not filed and the owner of the brothel was informed of what was happening, as well as 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 Bolivarian 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) who also set the owner of the factory free on the grounds that there was insufficient proof to show that workers had been in servitude. In the view of the ITUC, the involvement of the police is one of the pivotal factors in explaining the rise in internal and cross-border trafficking in recent years and the lack of effective prosecutions for trafficking.

The Committee notes the gravity of these allegations, on which the Government has not provided any information. The key role of the police in enforcing the law and the Convention is undermined in the event of the corruption of the police forces.

***The Committee urges the Government to provide information on the 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 and on the penalties imposed if the allegations are found to be true. The Committee notes that the Office for Integrated Assistance to Victims has proposed the establishment of a specialized unit to investigate the crime of the trafficking in persons and it hopes that the Government will indicate what action it has taken to give effect to this proposal.***

#### ***Legislative measures. Application of effective penalties***

According to the ITUC, although there are provisions in the Argentine Penal Code which are currently applied to prosecute traffickers (sections 126 – promoting or facilitating prostitution, 127bis and 127ter – crimes against sexual integrity, 140 and 142bis – crimes against freedom), these provisions do not cover all aspects of trafficking, which means that, for example, persons who recruit and transport victims cannot be prosecuted. The lack of a specific offence of trafficking also means that traffickers escape with relatively light sentences. Reference is made to the case of a trafficker (identified in the comments of the trade union organization) sentenced to just four and half years in prison, despite the fact that he forced dozens of trafficked women into prostitution in San Miguel. The creation of a specific offence of trafficking at the federal level would also resolve the problem currently faced by judges, who can only act within the jurisdiction of their province, and the conflicts over whether trafficking crimes come under national or provincial jurisdiction, which interfere with the investigation of cases of trafficking.

In its reply, the Government recognizes that Argentinian law is characterized by a piecemeal vision of the phenomenon and that the State clearly understands the need to establish a specific crime of the trafficking in persons. Crimes against sexual integrity and freedom (sections 127bis and 127ter, 125bis, 126 and 140 of the Penal Code, as well

as sections 116 to 121 of the National Migration Act on the illegal trafficking of persons), do not allow the prosecution of all the acts which constitute the crime of the trafficking in persons in relation to its various stages and objectives. Nevertheless, the Government indicates that this does not mean that the issue has been neglected by the State as there are currently three Bills that are being discussed by Parliament, one of which has already been approved by the Senate. The province of Córdoba is also developing specific legislation.

The Committee notes the extracts of the report of the Deputy Director of the Office for Integrated Assistance to Victims of the Office of the Attorney-General of the Nation. It observes that the above report advocates the need to establish a specific crime of trafficking as in several of the cases dealt with by the Office, including the case of the 34 Paraguayan nationals brought to the country with promises of work and then compelled to engage in prostitution in San Miguel, the person responsible was prosecuted under the provision on promoting and facilitating prostitution and was only sentenced to four years, while in another case of Dominican nationals in the same situation the charges brought were for the crime of unlawful association. According to the above report, there is a pressing need to establish a specific offence covering this crime which undermines human dignity.

***The Committee observes that the legislative shortcomings alleged by the trade union organizations and confirmed by the Government's indications have significant implications for the application of the Convention. The Committee hopes that legislative provisions specifically establishing the crime of trafficking will be adopted rapidly and will allow the imposition of penal sanctions, in accordance with Article 25 of the Convention. In the meantime, the Committee hopes that the Government will provide information on current prosecutions under existing penal provisions. In this regard, the Committee recalls that the Government is under the obligation to ensure that the penalties imposed by law are really adequate and are strictly enforced.***

#### **Assistance for victims**

The protection of victims of trafficking and, more generally, the protection of witnesses, contributes to ensuring compliance with the law and the effective punishment of those responsible, as required by *Article 25* of the Convention and *Article 5* of the Palermo Protocol. In this respect, the Committee notes with interest that in 2005 a judge of Juvenile Court No. 1 in the city of Necochea applied directly the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons in the case of four women who had escaped from the sexual exploitation to which they had been subjected. In her ruling, the judge ordered the Secretary for Human Rights of the Province of Buenos Aires to provide housing for the victims and guarantee their physical, psychological and moral well-being. This important precedent nevertheless underlines failings in the national legislation in relation to the protection of victims. The ITUC indicates in this respect that support can only be ordered by a judge when a judicial process has been initiated, while many trafficked people require support before they even consider taking legal action. It adds that the victims of trafficking do not currently benefit from adequate assistance and that in order to establish an effective national programme, adequate funding is necessary to provide for appropriate assistance of victims.

#### **International cooperation**

The Committee notes that, according to the Government, the Ministry of Labour is participating actively in the Human Rights Observatory of the Bolivian Community of the Ministry of Justice and Human Rights. ***The Committee hopes that the Government will provide information on the measures adopted or envisaged to coordinate the action taken with all countries that in one way or another are involved in the trafficking in persons within or outside the country.***

The Committee observes the convergent comments of the national and international trade union organizations on the trafficking in persons for labour and sexual exploitation. This practice 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 welcomes the Government's statement that "achieving better regulation is one of the concerns of the Argentine State".

***The Committee hopes that the Government, in addition to the action to which it has previously specifically referred in this observation, will also take the following action:***

- ***give priority to the adoption of legislation which appropriately defines, classifies as a crime and penalizes all forms of trafficking;***
- ***reinforce the effectiveness of the inspection services;***
- ***take measures to investigate and eradicate corruption of the police force in relation to trafficking;***
- ***take measures to ensure that those found guilty of trafficking have dissuasive penalties imposed;***
- ***provide information on measures taken to raise public awareness of the trafficking of persons;***
- ***provide adequate support and protection for the victims of trafficking; and***
- ***provide information on the measures taken to coordinate transnational action with both the countries of origin and those of destination.***

## Australia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1932)**

Further to its earlier comments, the Committee has noted the comprehensive and detailed information supplied by the Government in its reports received in September 2004 and October 2006, as well as the discussion that took place in the Conference Committee in June 2004.

*Article 1(1) and Article 2(1) and (2)(c) of the Convention. Privatization of prisons and prison labour.* In its earlier comments 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 has always made it clear that the two conditions apply 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 has previously 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.

The Government in its reports has expressed its view that its law and practice comply with the Convention, given that privately managed prisons in Australia remain under the supervision and control of public authorities, and that the private sector has no rights in relation to conditions for the work of prison inmates, such conditions being established by the public authorities. The Government asserts that Australia does not need to establish that work in its privately managed prisons is carried out voluntarily or without menace of penalty, as conditions of work in privately managed prisons are the same or similar to those in publicly managed prisons.

The Committee previously 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 2004 and 2006 reports, the Government again refers in detail to prison labour in private prison facilities in *New South Wales, Queensland, Western Australia and Victoria*, making 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)*. In addition, the Government reiterates the view that prisoners are not “hired to or placed at the disposal of private individuals, companies or associations”, since the contractual relationship between the Department of Corrective Services and engaged service providers does not provide for the hire of prison labour (*Queensland*). In its earlier report received in 2002, the Government recognized, however, that “prisoners are at the ‘disposal’ of the private contractor only in a very literal sense”.

In this connection, the Committee draws the Government’s attention to the discussion 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 General Survey of 2007 on the eradication of forced labour. The Committee 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 General Survey of 2007, where it indicated that the prohibition for prisoners to be placed at the disposal of private parties is absolute and not limited to work outside penitentiary establishments. The prohibition applies equally to workshops operated by private undertakings inside prisons; consequently, it applies to all work organized by privately run prisons.

Referring to the explanations in paragraphs 59–60 and 114–120 of its 2007 General Survey referred to above, the Committee points out that work by prisoners for private companies can be held compatible with the explicit prohibition of the Convention but 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 indicated that, taking into account their captive circumstances, it is necessary to obtain prisoners’ formal consent to work for private enterprises in state-run prisons or in privatized prisons and that it should be in writing. Further, given that such consent is given in a context of lack of freedom with limited options, there needed to 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. 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

free and informed consent is given. The Committee in its General Survey of 2007 gave examples 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. The Committee indicated that all of these factors should be taken as a whole in determining whether consent was freely given and they should be considered and assessed by the public authority.

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, from the Government's reports received in 2004 and 2006 that, in *New South Wales*, employment of inmates in correctional centres (including Junee Correctional Centre, the only privately managed facility) is voluntary on the part of the inmate and there are no incidents of forced labour. The Government indicates that, in *Queensland*, prisoners are not forced to participate in approved work activities: though no formal consent of prisoners is required, prisoners apply (and thereby impliedly consent) to perform approved work activities. As regards *Western Australia*, the Government indicated in 2004 that the intent of Prison Regulations 43, 44 and 45 is to require prisoners to work, but not force them to do so against their will. It has also stated in its latest report that the maintenance of the private prison will not lead to any instances of forced labour as defined in the Convention. ***The Committee hopes that the Government will take the necessary measures to ensure that free and informed consent is required for the work of prisoners in privately operated prisons in accordance with the factors outlined by the Committee as set out above.***

*In particular, the Committee requests the Government to provide, in its next report, information:*

- *on the action taken to ensure that the informed written formal consent to perform work is obtained from such prisoners without the menace of any penalty;*
- *on the action taken to ensure that such formal consent is authenticated by the existence of objective and measurable factors such as the prisoners performing work in conditions approximating a free labour relationship, together with other advantages such as learning of new skills which could be deployed when released; the offer of continuing work of the same type upon release; or the opportunity to work cooperatively and develop team skills, or other similar factors;*
- *on the objective and measurable factors which are to be taken into account by public authorities in order to ensure that voluntariness of the consent is authenticated;*
- *on the procedures undertaken by public authorities to regularly assess that such objective and measurable factors are in place in order to ensure that work performed by prisoners is voluntary.*

*Article 25. Penal sanctions.* Further to its earlier comments, the Committee has noted the Government's indication in its latest report that there have been three prosecutions under way, involving seven defendants, under division 270 of the Criminal Code (which deals with slavery and sexual servitude), as amended by the Criminal Code Amendment (Trafficking in Persons Offences) Act, 2005. ***The Committee would appreciate it if the Government would provide information on the outcome of these proceedings, indicating the penalties imposed. Having also noted the Government's indication in its previous report that six of eight states and territories (New South Wales, Victoria, Western Australia, South Australia, Northern Territory and the Australian Capital Territory) have introduced provisions criminalizing sexual servitude, the Committee requests the Government to supply information on any legal proceedings which have been instituted under these provisions and on any penalties imposed.***

The Committee is also addressing a request on certain other points directly to the Government.

## Bangladesh

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1972)***

*Article 1(1) and 2(1) of the Convention.* 1. *Restrictions on freedom of workers to terminate employment.* In its earlier comments, the Committee referred to the Essential Services (Maintenance) Act No. LIII, 1952, under which termination of employment by any person employed by the central Government without the consent of the employer is punishable with imprisonment for up to one year, notwithstanding any express or implied term in the contract of employment providing that the employee may freely, and with notice, terminate his or her employment (sections 3, 5(1)(b) and explanation 2, and section 7(1)). Pursuant to section 3 of the Act, these provisions apply to every employment under the central Government and to any employment or class of employment declared by the Government to be an essential service. The Committee also referred to the Essential Services (Second) Ordinance No. XLI, 1958, which contains similar provisions (sections 3, 4(a) and (b) and 5). The Committee pointed out that, even regarding employment in essential services whose interruption would endanger the existence or well-being of the whole or part of the population, provisions depriving workers of the right to terminate their employment by giving notice of reasonable length are incompatible with the Convention.

The Committee notes the Government's statement in its report that the Essential Services (Maintenance) Act No. LIII, 1952, has not yet been repealed, but its provisions are no longer applied in practice. As regards the Essential Services (Second) Ordinance No. XLI, 1958, the Government indicates that it is still in force and is not listed among the existing legislative texts to be repealed in the course of the labour legislation reform.

*While noting the Government's statement that it is in favour of the freedom of workers to terminate their employment by way of notice of reasonable length, the Committee trusts that the necessary measures will be taken to formally repeal the Essential Services (Maintenance) Act No. LIII, 1952, and to repeal or amend the Essential Services (Second) Ordinance No. XLI, 1958, in order to bring legislation into conformity with the Convention, and that the Government will soon be in a position to report the progress made in this regard.*

2. *Trafficking in persons.* The Committee previously noted the Government's indications concerning various programmes aiming at combating trafficking in persons for the purpose of exploitation, which include awareness-raising and prevention measures. The Government states, in its latest report, that the existing programmes and activities have improved the situation. ***The Committee would appreciate it if the Government would describe such programmes in more detail and communicate copies of any relevant reports, articles, etc., as well as any other information concerning awareness-raising and prevention measures. Please also continue to provide information on the progress achieved in the implementation of the multisectoral action programme against trafficking and on the progress of the Law Commission set up to review existing laws and enact new ones to safeguard women's rights and to prevent violence against women including trafficking.***

*Article 25. Law enforcement.* The Committee recalls that, under this Article of the Convention, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation of any ratifying State to ensure that the penalties imposed by law are really adequate and are strictly enforced. The Committee refers to its earlier comments and notes also the Government's statements in the report that the police, the other law enforcement agencies and concerned officers, including local government organizations, are involved actively in fighting against trafficking in persons. ***The Committee urges the Government to pursue its efforts to strengthen the law enforcement mechanism and requests the Government to supply information on the number of trafficking offences reported, the number of prosecutions initiated and the number of convictions obtained, indicating the penalties imposed.***

## Belize

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1983)**

The Committee has noted the Government's brief reply to its earlier comments.

*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 made 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, by virtue of section 66 of the Prison Rules, an obligation to perform labour) 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 has noted from the Government's latest report that section 35(2) of the Trade Unions Act has not been amended. ***While having noted the Government's repeated indication in its earlier reports that there had been no recorded penalties of imprisonment imposed under this section, the Committee expresses firm hope that the necessary measures will 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 soon be in a position to report the progress achieved in this regard.***

## Benin

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)**

*Article 1(a) of the Convention. Imposition of sentences of imprisonment involving an obligation to work as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments, the Committee reminded the Government that *Article 1(a)* of the Convention prohibits the use of forced labour as a punishment for expressing certain political views or views opposed to the established

political, social or economic system. It stressed in particular that when they involve compulsory labour, sentences of imprisonment fall within the scope of the Convention when they may be imposed for expressing 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 1962 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. It referred more particularly to the following provisions: 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 in 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); sections 26 and 27 (slander and insults).

The Committee likewise referred to Act No. 97-010 of 20 August 1997 liberalizing audiovisual communication and establishing special penal provisions relating to offences in the area of the press and audiovisual communications. While noting that the provisions of this Act prevail should they conflict with those of the abovementioned Act on the Freedom of the Press, the Committee pointed out that the two Acts were different in scope, since Act No. 97-010 covers audiovisual communication 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 to cause 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 of 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 report, the Government indicates its intention of ensuring that national laws are brought into line with ratified Conventions, and that in November 2005 a department to promote fundamental rights at work was established for the purpose, inter alia, of ensuring that laws and regulations are consistent with Conventions. The Government adds that the provisions of the offending texts will thus be revised. ***The Committee takes note of the Government's resolve to amend provisions of the national legislation that could be incompatible with the Convention. It hopes that these provisions will be revised to ensure that normal exercise of freedom of expression and peacefully expressed opposition to the established political, social or economic system may not be punished by imprisonment involving an obligation to work. It requests the Government once again to specify whether the courts have had recourse to the abovementioned 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 that in its last report, the Government states that the draft Merchant Shipping Code submitted to the National Assembly for adoption takes account of 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 Code as soon as it is adopted.***

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

## Bolivia

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1990)***

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation on the following matters:

*Article 1(d) of the Convention. Punishment for having participated in strikes.* In 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 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 supply information on the effect given in practice to these provisions in order to enable it to evaluate their scope, and to provide copies of court decisions made under them, indicating the number of convictions.

With reference to this matter, the Committee noted the conclusions of the Committee on Freedom of Association regarding the complaint made by the World Confederation of Labour (WCL), Case No. 2007 (GB.277/9/1). According to the complaint, arrest warrants had been issued against a number of striking workers on the basis of section 234 of the Penal Code. The WCL alleged that this case set an extremely serious precedent in criminalizing a strike (GB.277/9/1, paragraph 263).

In its conclusions the Committee on Freedom of Association stated that the Committee of Experts in its comments on the application of Convention No. 87 by Bolivia in 1999 and previous years criticized certain restrictions in respect of the right to

strike, such as 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 the Regulation), the unlawful nature of general and sympathy strikes which are liable to penal sanctions (Legislative Decree No. 02565 of 1951) and the recourse to compulsory arbitration by decision of the Executive Power (section 113 of the General Labour Act). In these circumstances the Committee on Freedom of Association urged the Government to adopt measures as a matter of urgency with a view to amending legislation concerning strikes in respect of all the points raised by the Committee of Experts and with regard to the need to ensure that strikes may be declared illegal only by an independent body, given that excessive requirements and restrictions in many cases make legal strike action impossible in practice (paragraph 282). In its recommendations, the Committee emphasized that no worker on strike who had acted peacefully should be subject to criminal sanctions, and asked the Government to reform the Penal Code with this principle in mind and to inform it of any rulings handed down in this regard (paragraph 285(c)).

The Committee referred to the explanations contained in paragraph 187 of its General Survey of 2007 on the eradication of forced labour which indicate that excessive restrictions imposed on the exercise of the right to strike have an impact on application of the Convention. This is the case with the requirement for 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 expressed the hope that the Government would take the necessary measures to ensure that penalties involving compulsory labour would not be imposed for participation in strikes.***

The Committee notes the information provided by the Government in its report to the effect that, with the assistance of the ILO technical advisory mission carried out in April 2004, a draft Act has been drawn up on the basis of a tripartite agreement resulting from negotiations between 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, which classifies as an offence strikes or lockouts declared illegal by the Ministry of Labour, thereby abolishing the penalties which had previously been imposed on strikes.

***The Committee hopes that the Government will provide a copy of the amended legislation 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.***

## Brazil

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1957)***

The Committee notes the detailed information provided by the Government in its report. It also notes the comments sent by the International Confederation of Free Trade Unions (ICFTU) concerning the trafficking of persons, which are examined in a direct request addressed to the Government.

#### ***Articles 1(1) and 2(1) of the Convention. Slave labour***

For many years, the Committee's comments have referred to the situation of workers who are subject to inhuman and degrading conditions of work, debt bondage or internal trafficking for the purposes of labour exploitation. Over recent years, the Committee has noted with interest a certain number of measures taken by the Government, which indicate its commitment to combating this phenomenon, referred to in Brazil as "slave labour". Such measures have provided the country with a legal arsenal adapted to national circumstances, through the adoption of provisions clearly describing the elements which constitute the crime of "reducing a person to a condition akin to that of slavery" (section 149 of the Penal Code), a national action plan and campaign for the eradication of slave labour, and institutions which specialize in combating this phenomenon, in particular the National Commission for the Eradication of Slave Labour (CONATRAE) and the Mobile Inspection Group. Thanks to inspection visits carried out by this group, a large number of workers have been liberated from the hands of malicious and exploitative employers. These victims have been compensated and heavy fines have been imposed on the persons who exploited them. Nevertheless, despite all these measures, the phenomenon persists. Neither legislation, nor the monitoring activities of the labour inspectorate, nor the rulings handed down by the courts, appear to be sufficiently dissuasive to put an end to a practice which evidently remains lucrative. ***The Committee therefore asks the Government to continue doing everything within its power to remain at the front line in the battle against persons who impose forced labour on others, despite the obstacles and resistance which continue to exist in the country.***

1. ***Strengthening and adjustment of the legal framework.*** (a) ***Bill to amend article 243 of the Constitution (PEC No. 438/2001).*** The Committee previously asked the Government to take all the measures in its power to accelerate the adoption of this Bill. By providing for the expropriation without compensation of establishments in which the use of slave labour has been identified, this amendment would make it possible to impose truly dissuasive penalties on the owners of such establishments. The amendment also provides that the expropriated lands will be consigned to the agrarian reform and reserved as a priority for the persons who worked on them. The Committee notes the Government's indication that the Bill, which has already been approved by the Senate, has been awaiting its second reading in the Chamber of Deputies since the end of 2004. The Government states that, despite its efforts in favour of the approval of this Bill, the matter is progressing slowly and is meeting strong opposition from members of the Chamber of Deputies who represent the rural sector.

(b) ***List of persons or entities which use or have used slave labour.*** Since 2003, the names of individuals or entities convicted of having used slave labour have been entered into the "Register of Employers", a list drawn up and regularly updated by the Ministry of Labour. Every six months, the register 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 the names included on the list. Moreover, for two years following the inclusion of a name in the register, the labour inspectorate verifies the conditions of work in the establishments concerned. If there is no repeat offence 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, during the most recent review of the register in July 2007, 22 names were removed and 51 were added, which brings the total of individuals or entities listed to 192. The Committee notes with concern that, according to the information provided by the Government, this register has been contested in the courts. The National Confederation of Agriculture and Livestock (CNA) filed a complaint with the Supreme Federal Court contesting the legality and constitutionality of the list adopted by order of the Ministry of Labour. Subsequently, and while awaiting the decision of the Supreme Federal Court, a number of individuals and entities included in the register asked the courts to remove their names from the list, as a preservation measure. While certain courts agreed to these requests, the Attorney-General of the Union (AGU) contested their decisions, as it considered that the register was not illegal since it only contained the names of individuals or entities convicted by a final court decision, which was itself based on reports made following inspection visits carried out by public officials. The Government states that, in order to end this controversy, a Bill creating a register of employers who have kept workers in conditions of slavery has been tabled with a view to giving legal force to the register instituted by ministerial directive (PLS No. 25/05).

The Government also states that the register has served as the basis for considering that an establishment has not fulfilled its social function. In one case, the land concerned was declared of social interest for the purposes of agrarian reform and the President of the Republic ordered its expropriation. Furthermore, a declaration of intent on the eradication of slave labour was signed by the Brazilian Banking Federation (FEDRABAN) in December 2005. Under this instrument, FEDRABAN undertakes to implement a programme of action to dissuade its associates from granting credit to enterprises which use slave labour.

(c) *Other bills.* The Government states that other bills have been tabled which aim, on the one hand, to give a legal basis to the prohibition under which individuals and entities recognized as having used slave labour cannot obtain tax incentives and credit or participate in public tendering and, on the other hand, to establish stricter penalties for the crime of reducing a person to a condition akin to slavery.

The Committee has already stated that the register is a vital tool in combating forced labour. Judging by the reactions it has generated, it seems that the objective sought by the register, i.e. to undermine directly the economic and financial interests of those who exploit slave labour, is being achieved. ***The Committee therefore hopes that the Government will continue to take all the necessary measures to accelerate the adoption of the bills and the draft constitutional amendment referred to above and that of any other draft legislation which contributes to meeting this objective.***

2. *Prevention and awareness-raising activities.* In its previous comments, the Committee noted the public awareness-raising and prevention measures taken by the Government. It noted the role played in this area by CONATRAE as a permanent entity for the coordination of all the action to be taken in the context of the National Plan of Action. It also noted the action taken within the framework of the cooperation project between the ILO and the Government – “Combating forced labour in Brazil” (2002–07).

The Committee notes that these activities continue and take a number of different forms:

- publicity campaign for the eradication of slave labour, involving the distribution of flyers warning the population of the methods used by middlemen (“gatos”) to recruit workers and containing information on labour rights and how to report cases of slave labour;
- programmes favouring access to credit and land for workers freed from slavery and providing such workers with agriculture-related technical assistance and training so as to promote their emancipation through production and work;
- the “Rights Shop” initiative, the aim of which is to provide identity papers and legal assistance to rescued workers or potential victims. These “Rights Shops”, which operate as fixed or travelling units, disseminate information on workers’ rights, citizenship and the risk of enslavement, particularly in isolated areas where recourse to slave labour is widespread;
- the “Slavery, don’t even think about it” project, the aim of which is to reduce the number of adolescents sent to Amazonian regions by mobilizing schools and teachers to play a role in the prevention of slave labour.

The Committee notes that civil society and the ILO, through its cooperation project, are often involved in these initiatives and in the organization of workshops and seminars. Furthermore, it notes with interest that the business world is also developing initiatives to promote the social responsibility of enterprises. Such initiatives, which aim to ensure that the activity, production chain or the products purchased are in no way related to slave labour, put moral and economic pressure on enterprises or farms which might be tempted to use slave labour and encourage them to adopt good labour practices. The Government refers, in particular, to the following: the National Covenant for the Eradication of Slave Labour launched in 2005, which has over 120 signatories including large supermarket chains and industrial and financial groups that have undertaken not to buy products resulting from slave labour; the Citizen Charcoal Institute, the main aim

of which is to eradicate slave labour in the sector's production chain and promote the integration of rescued workers in the labour market; and the Social Cotton Institute, which has the same objective.

*The Committee welcomes the efforts of the Government and asks it to continue providing information on the measures taken to pursue activities which aim to raise awareness and mobilize the population with a view to combating slave labour. Please indicate the measures taken to support and promote the private initiatives carried out in this domain, to protect the marginalized groups who are at risk of becoming victims and to reintegrate rescued workers.*

3. *Strengthening and protection of the labour inspectorate.* In its previous comments, the Committee noted the central role played by the Special Mobile Inspection Group (GEFM) in combating slave labour and asked the Government to provide information on the resources made available to it to carry out its functions. The Committee also expressed its concern at the climate of intimidation and violence in which labour inspectors, attorneys and judges have to work. In its report, the Government states that, for each of its operations, the GEFM is made up of labour inspectors, federal police officers and attorneys from the Labour Prosecution Service. According to the statistics provided by the Government, since its creation in 1995, the GEFM has carried out more than 560 operations which have involved the inspection of more than 1,800 estates and led to the liberation of more than 25,000 workers. The number of operations increases each year, which suggests that the work of the GEFM is not subject to any particular restrictions or obstacles. The Government does not deny, however, that difficulties are encountered by the GEFM and the other public and private agents involved in combating slave labour. It states that it has adopted various measures to attenuate these problems, for instance, increasing the daily payments made to civil servants working in the interior of the country. With regard to the processing of complaints filed with the Labour Inspection Secretariat (SIT), the Government states that the SIT examines their relevance and decides whether an inspection must take place. The period of time between the receipt of a complaint and the inspection visit depends on the circumstances of the reported violation: the location of the enterprise, conditions of access, existence of armed militias and number of workers concerned. A computerized control system for complaints is currently being set up, which will streamline the processing of information and indirectly enhance the Government's response capacity. As regards the protection of labour inspectors, the Government recalls that the federal police are present at each operation and can exercise the function of criminal police.

The Committee notes all the above information. It observes that, in September 2007, the secretary of the SIT decided to suspend all GEFM inspection visits. This decision was taken in response to the accusations made against the GEFM by an external temporary committee of the Senate, set up following an inspection carried out by the GEFM subsequent to which a large number of workers were freed. The Senate committee requested the opening of a police inquiry into the methods used by the GEFM at this inspection. The SIT considered that the climate of intimidation and suspicion did not permit the GEFM to carry out its activities in good conditions. The Committee notes that the GEFM resumed its inspection visits following the conclusion of a cooperation agreement between the Ministry of Labour and Employment and the AGU. The services of the AGU now provide legal assistance in respect of the activities carried out by the GEFM and assist labour inspectors in the event of their implication in any proceedings. ***While recalling that the GEFM is a vital link in the battle against slave labour, the Committee is concerned about the pressure it has to face and asks the Government to continue taking all measures to allow the GEFM to carry out its activities in a serene climate free from threats or political pressure. The Committee would like the Government to continue providing information on the action taken by the GEFM (number of complaints received by the SIT, number of operations carried out, number of workers rescued) and to indicate the measures taken to strengthen the intervention and reaction capacity of the GEFM.***

4. *Article 25. Imposition of effective penalties.* (a) *Administrative sanctions.* The Committee recalls that the effective imposition of penalties for violations of labour legislation is an essential element in combating slave labour in so far as slave labour is characterized by the combination of a number of violations of labour legislation which must be punished as such. Moreover, taken as a whole, they constitute a criminal offence calling for specific penalties, as examined below. The Committee notes the Government's statement to the effect that the total of the fines imposed for violations of labour legislation is constantly increasing. It also emphasizes the role of the Labour Prosecution Service, which, within the framework of public civil action, demands, in addition to fines, the payment of compensation for moral damages suffered by the worker and for group moral damages. The Government provides statistics on all these procedures and also refers to court decisions in which record amounts of compensation have been granted. The Government considers the large fines imposed and the high amount of compensation sought for group moral damages, in combination with the register, to be highly effective since they undermine the economic advantages of using slave labour. The Committee also believes that slave labour will continue for as long as it remains lucrative. ***The payment of fines and compensation of dissuasive amounts, combined with the impossibility of accessing public subsidies and financing and selling their merchandise, and expropriation measures, constitute the elements of economic pressure which must be put on persons who exploit work carried out by others. The Committee therefore asks the Government to continue to ensure that these administrative penalties are dissuasive and that they are collected in practice, and to provide information in this regard.***

(b) *Penal sanctions.* The Committee recalls that, in accordance with *Article 25* of the Convention, the Government must ensure that the penalties imposed by law are really adequate and are strictly enforced. On a number of occasions it has expressed its concern regarding the low number of cases tried and sentences imposed by the criminal courts under section 149 of the Penal Code for reducing a person to a condition akin to slavery.

The Government states that, according to the Federal Attorney-General's Office, between 1996 and 2006, there were 110 criminal prosecutions against entities accused of using slave labour. The Federal Attorney-General's Office passed on 882 reports from the Ministry of Labour and Employment to the regional prosecutor's offices for investigation of slave labour, 144 of them in 2005. According to the Federal Attorney-General's Office, only three prosecutions led to convictions by the courts for exploitation of slave labour, and in one case, the prison sentence was commuted to community service. The Government, the Federal Attorney-General's Office and the social movements believe that the main cause of the impunity prevailing in the country is the uncertainty as to which courts are the competent forum for trying crimes of exploitation of slave labour – the federal court, the ordinary courts or the labour courts. The Government states that the determination of jurisdiction is a matter to be decided by the Federal Supreme Court.

More recently, the Committee has become aware of the Supreme Labour Court Order of 30 November 2006, which determines that the competence for examining and trying the crime of reducing a person to a condition akin to slavery (section 149 of the Penal Code) lies with the federal courts. ***The Committee hopes that this decision will bring an end to the conflicts concerning jurisdiction which have prevented those responsible for such crimes from being tried. It would be grateful if the Government would provide information on the court decisions made on the basis of section 149 of the Penal Code by the federal courts. In this regard, the Committee emphasizes that in order to eradicate the practice of slave labour it is vital that dissuasive penal sanctions be imposed on those responsible for these crimes.***

## Burundi

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1963)**

The Committee notes the Government's report and the texts annexed thereto. It notes the provisions of the Constitution of 18 March 2005, in particular article 26, which sets forth the prohibition on slavery and the trafficking of slaves in any form.

*Articles 1(1) and 2(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 also addressing a request directly to the Government.

## Cameroon

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Article 2(2)(b) and (e) of the Convention. Work imposed in the context of the national service for participation in development.* For many years, the Committee has been emphasizing the need to amend or repeal Act No. 73-4 of 9 July 1973 instituting the national service for participation in development, which allowed the imposition of work in the general interest on citizens aged between 16 and 55 years for 24 months, with penalties of imprisonment for refusal. The Committee notes that this Act was repealed by Act No. 2007/003 of 13 July 2007 establishing the national civic service for participation in development. The Committee notes with satisfaction that participation in work in the general interest is now on a voluntary basis. The Committee refers to its direct request, in which it asks the Government to provide information on the effect given to this Act in practice.

*Article 2(2)(c). Hiring of prison labour to private associations.* For many years, the Committee has been requesting the Government to take the necessary measures to supplement the legislation respecting the prison system (firstly Decree No. 73-774 of 11 December 1973, and then Decree No. 92-052 of 27 March 1992) by a provision requiring the formal consent of detainees who are hired to private enterprises and individuals. The Committee notes the Government's confirmation that Order No. 213/A/MINAT/DAPEN, of 28 July 1988, is still in force. 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 adds that for the time being no text issuing regulations under Decree No. 92-052 respecting the prison system has been adopted and that at a later date it will provide an opinion in writing by the Directorate of Prison Affairs.

The Committee recalls that, in a captive environment, it is necessary to obtain prisoners' formal consent to work in cases where such work is performed for private enterprises. The Committee has also considered that there need to be indicators which authenticate or satisfy 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 hopes that the Government will take all the necessary measures to adopt in the very near future the implementing texts of the Decree respecting the prison system and that they will explicitly provide that convicts shall formally give their consent to any work performed for the benefit of private individuals, companies or associations, and will ensure conditions which approximate a free labour relationship, in terms of remuneration and occupational safety and health. The Committee requests the Government to provide information on any progress achieved in this respect.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Article 1(a) of the Convention. Imposition of imprisonment involving an obligation to work as punishment for expressing political views or views ideologically opposed to the political, social or economic system.* In its previous comments, the Committee noted that the Penal Code adopted in 1990 no longer exempts from the obligation to work persons sentenced to imprisonment for political offences. Under section 24 of the Penal Code and section 49 of Decree No. 92-052 establishing the prison regime, penalties of imprisonment involve the obligation to work. The Committee stressed that where an individual is, in any manner whatsoever, compelled to prison labour as punishment for expressing certain political views or views opposed 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 of opposition. To enable the Committee to ascertain that the application of the provisions mentioned below is restricted to activities falling outside the protection provided by 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 writing 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 imprisonment of 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. According to section 14 of the Act, 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 report the Government states that the aim of the prison policy is the social rehabilitation of convicts, including those found guilty of the offences referred to in the abovementioned provisions. In this context, all necessary measures are taken to prevent the exploitation of convicts. The Committee reminds the Government that under the Convention, persons who express, without using or inciting to violence, political views or views that are ideologically opposed to the established political, social or economic order, may not be subjected to imprisonment involving compulsory labour, whatever the form of such labour. ***In view of the developments referred to above, the Committee again asks the Government to provide information on judicial decisions handed down under the abovementioned provisions of the Penal Code and the Act on freedom of association (number of sentences and copies of the decisions) that illustrate their scope. It would also be grateful if the Government would 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.* For many years the Committee has been drawing the Government's attention to the need to amend sections 226, 229, 242, 259 and 261 of the Merchant Shipping Code (Ordinance No. 62/DF/30 of 1962), under which certain breaches of discipline committed by seafarers may be punished by imprisonment involving the obligation to work. In its previous comments, the Committee noted the adoption of the revised Merchant Shipping Community Code by the Council of Ministers of the Economic and Monetary Community of Central Africa – CEMAC (Regulation No. 03/01-UEAC-088-CM-06 of 3 August 2001). Under the above Code, breaches of labour discipline by seafarers are not punishable by imprisonment. The Committee notes, that in its last report, referring to the legislation giving effect to the Convention, the Government cites the Cameroonian Merchant Shipping Code of 1962 and the CEMAC Code of 2001 and indicates that the text of the revised CEMAC Code will be sent as soon as it is adopted. ***The Committee requests the Government to provide more extensive information on the provisions that actually apply to the discipline of seafarers and to state which of the two Codes prevails should their provisions be contradictory.***

## Canada

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1959)***

*Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers.* In its earlier comments, the Committee referred to certain provisions of the Canada Shipping Act, under which penalties of imprisonment involving compulsory labour could be imposed for breaches of discipline in circumstances where the safety of the ship or the life or health of persons are not endangered. Having noted the Government's clarifications concerning sections 82(3) and 101(1) and (2) of the new Canada Shipping Act, 2001, the Committee notes that the penalties of imprisonment provided for in section 101(2) do not involve an obligation to perform prison labour. ***Noting also the Government's indication in the report that the new Canada shipping act, 2001, will enter into force in 2007, the Committee asks the Government to keep the ILO informed of the date of entry of the new Act and related regulations into force.***

## 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:

1. *Article 2, paragraph 2(a), of the Convention.* The Committee has several times drawn the Government's attention to section 4 of Act No. 11-66 of 22 June 1966 establishing the National People's Army and section 1 of Act No. 16 of 27 August 1981 introducing compulsory national service. The former provides for active participation by the army in tasks of economic construction for effective production and the latter stipulates that national service, which comprises both military and civic service, enables every citizen to take part in the defence and construction of the nation. The Committee drew the Government's attention to *Article 2, paragraph 2(a)*, of the Convention which provides that work or service exacted in virtue of compulsory military service laws is excluded from the scope of the Convention only when it is imposed for work of a purely military character. Work exacted from recruits as part of national service, including work related to national development, is not purely military in nature. The Committee referred in this context to paragraphs 24-33 and 49-62 of its General Survey of 1979 on the abolition of forced labour. According to the Government, the practice of imposing on recruits work which is not purely military in nature has fallen into disuse. The Committee notes that, in its last report, the Government expressed its intention of repealing Act No. 16 of 1981 on compulsory national service. ***The Committee hopes that the necessary steps will be taken to repeal the above Act in order to bring the national legislation into conformity with the Convention.***

2. *Youth brigades and workshops.* In its previous comments, the Committee referred to section 17 of Act No. 31-80 of 16 December 1980 on guidance for youth under which the party and mass organizations would gradually create all the conditions for the formation of youth brigades and the organization of youth workshops. The Committee notes that, according to the Government, these practices no longer exist. It observes, however, that the abovementioned Act has not been repealed. The Committee noted that a draft decree on voluntary work for young people was in the process of being approved, and requested specific information on the type of tasks performed, the number of persons concerned, the duration and conditions of their participation. ***The Committee asks the Government to indicate the measures taken or envisaged to bring the national***

**legislation into line with the Convention and to provide a copy of the decree on voluntary work for young people as soon as it is adopted, together with relevant information.**

3. *Article 2, paragraph 2(d)*. In its previous comments, the Committee asked for the repeal of Act No. 24-60 of 11 May 1960 which allows persons to be requisitioned for work of public interest in cases which do not constitute the emergencies provided for in *Article 2, paragraph 2(d)*, of the Convention. 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 indication in its report that, although it has never been repealed, Act No. 24-60 has fallen into abeyance since the publication of the Labour Code, the Penal Code and the new Constitution of 2002. **The Committee asks the Government to provide information on the measures taken to formally repeal this Act in order to avoid any legal ambiguity.**

4. *Article 2, paragraph 2(e). Imposition of sanitation jobs*. In its previous comments, the Committee noted that the Government may request the population to carry out certain sanitation jobs. The Government indicated that this practice consisted of mobilizing the population for work in the community interest and was based on section 35 of the Statutes of the Congolese Labour Party, but that it no longer exists and such tasks (weeding, sanitation work) are now undertaken voluntarily by associations and employees of the State and local communities. The Government indicates its intention of including, in the Labour Code currently being revised, a provision to establish the voluntary nature of sanitation work. **The Committee asks the Government to provide a copy of the new provisions of the Labour Code once they are adopted.**

5. **The Committee asks the Government to provide copies of the Order regulating the operation of prisons and prison labour.**

**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)**

*Articles 1(1) and 2(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(2)(c). Work exacted from detainees who have not been convicted*. 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.*

In addition, the Committee addresses a request directly to the Government concerning other points.

## **Dominica**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1983)**

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(1) and Article 2(1) and (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 indication in its latest report 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 also addressing a request on certain 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.*

## **Ecuador**

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Article 1(d) of the Convention. Imprisonment involving compulsory labour for participation in a strike.* 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. The Committee referred previously to Decree No. 105 of 7 June 1967, which allows a prison sentence of from 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 from 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 allowed by the law, the paralysing of the means of communication and similar anti-social acts". Prison sentences involve compulsory labour under sections 55 and 66 of the Penal Code.

In its report, the Government once again indicates that it is making every effort to bring the national legislation into conformity with the Convention and that for this purpose the Government has taken measures for the Congress of the Republic to amend the provisions contained in Decree No. 105 of 7 June 1967. For this purpose, the Committee's observation has been submitted to the relevant commissions of the National Congress.

*The Committee notes this information and hopes that Decree No. 105 will be repealed without delay. The Committee points out in this respect that the repeal of this Decree has also been requested in the observation on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).*

*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, 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 notes the Government's indication in its reports that it is making every effort to bring the national legislation into conformity with the Convention. *As it has been commenting on this matter for many years, the Committee hopes that the Government will be able to indicate in the very near future that section 165 of the Maritime Police Code has been amended or repealed.*

Following a detailed examination of the list of draft legislative texts submitted to the specialized commissions of the National Congress, available on its web site ([www.congreso.gov.ec](http://www.congreso.gov.ec)), the Committee has not found draft texts relating to Decree No. 105 of 1967, nor section 165 of the Maritime Police Code. *The Committee requests the Government to*

*indicate the stage reached by the draft texts in their examination by the special commissions and whether any statement has been made relating to the amendment or repeal of the above provisions, as requested by the Committee.*

*Article 1(a). Imprisonment involving compulsory labour for offences related to freedom of expression.* The Committee also previously requested the Government to provide information on the application of sections 230 and 231 of the Penal Code (disrespect or insult towards public officials). The Government reiterates that no court decisions have been made under these provisions. The Committee notes from the web site of the National Congress that two draft texts have been submitted to the Standing Specialized Commission on Civil and Penal Matters with a view to decriminalizing insults, as well as disrespect towards public officials, which are established as offences in section 230 and 231 of the Penal Code.

*The Committee requests the Government to provide information on the progress of these draft texts which bring the national legislation into greater conformity with the Convention.*

## Egypt

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1955)**

*Articles 1(1) and 2(1) of the Convention. Use of conscripts for non-military purposes.* For a number of years, the Committee has been referring to Act No. 76 of 1973, as amended by Act No. 98 of 1975, concerning general (civic) service of young persons on completion of their studies. According to section 1 of the Act, young persons, male and female, who have completed their studies and who are surplus to the requirements of the armed forces, may be directed to work, such as in development of rural and urban societies, agricultural and consumers' cooperative associations and work in production units of factories. The Committee recalled that the Conference, while adopting the Special Youth Schemes Recommendation, 1970 (No. 136), had rejected the practice of making young people participate in development activities as part of, or instead of, their compulsory military service, as being incompatible both with the present Convention and Convention No. 105.

The Committee has noted with interest the Government's indication in its report that there is a proposal, which is currently before the Committee on Law Revision at the Ministry of Social Solidarity, to amend the Act concerning general (civic) service of young persons referred to above, so as to provide for the voluntary nature of the service. The Committee has also noted statistical information concerning the number of persons called up for general (civic) service and the number of persons exempted from such service.

*The Committee trusts that the necessary measures will soon be taken to amend the Act concerning general (civic) service of young persons by clearly providing that the participation of young people in the civic service programme is voluntary, in order to ensure the observance of the forced labour Conventions. Pending the adoption of such measures, the Committee requests the Government to continue to provide information on the application of the above legislation in practice, including information on the number of persons who applied for exemption from such service and those whose applications have been refused.*

The Committee is again addressing a request on certain other points directly to the Government.

## El Salvador

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1995)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons and penalties.* In its previous observation, the Committee requested the Government to provide information on the measures taken to prevent and combat trafficking in persons, including the court judgements handed down pursuant to sections 367 and 370 of the Penal Code, under the terms of which trafficking in persons for any purpose and the organization or membership of international organizations involved in the trafficking of slaves or the sale of persons are punishable by a prison sentence of between four and eight years, respectively. The Committee noted the Government's indication that, in connection with sections 367 and 370 of the Penal Code, a number of court cases were under way on which no rulings had yet been handed down and that it would bring them to the attention of the Committee when they were issued. The Committee noted with concern that no penalty had been imposed under the provisions of the Penal Code to punish trafficking in persons and recalled the requirements set out in the Convention that the exaction of forced labour shall be punished as a penal offence by penalties that are really adequate and are strictly enforced (*Article 25*).

The Committee notes the Government's indication in its last report received in August 2006 that awareness-raising campaigns are being carried out for the population at large with the participation, inter alia, of the Office of the Public Prosecutor of the Republic and its crime prevention unit. It adds that a National Committee on Trafficking in Persons has been established in which various institutions participate, such as the General Directorate of Migration and Foreign Nationals, the national police, the Office of the Public Prosecutor, the Ministry of Labour and non-governmental organizations. The purpose of the National Committee is to coordinate action to ensure that effective measures are taken to combat and prevent trafficking in persons. Training programmes have also been carried out for persons working in this area on proving the existence of the crime and the accusation of the perpetrator in a manner that guarantees the presumption of innocence.

The Committee once again observes that the Government's report does not contain any information on the application of sections 367 and 370 of the Penal Code. The Government does not refer to court cases that are under way, nor to any penalty imposed on the persons responsible. The Committee hopes that compliance with procedural guarantees of the presumption of innocence, which clearly have to be safeguarded in every country abiding the rule of law and to which the Government refers in its last report, will not affect or impede compliance with the requirement of the Convention, namely the imposition of penal sanctions following due process on those found guilty of the crime of trafficking in persons.

*The Committee requests the Government to provide information on the court cases that are under way and, where appropriate, copies of the rulings handed down under the national legislation that has been adopted (sections 367 and 370 of the Penal Code) with a view to combating this serious crime. The Committee hopes that the Government will continue to provide information on any other measure adopted to combat trafficking in persons.*

## Ghana

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)**

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

*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(2)(d) of the Convention. Recourse to compulsory labour under emergency powers.* The Committee has noted a communication dated 11 August 2006, received from the Greek General Confederation of Labour (GGCL), which contained observations concerning the application by Greece of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). The Committee has noted that this communication was transmitted to the Government on 4 September 2006, for such comments that might be considered appropriate.

The GGCL alleged that, over the last 32 years, the Government has often resorted to civil conscription that under threat of severe penalties compels workers to terminate their strike action and return to work. The GGCL indicated, in particular, that the Government has issued, on 22 February 2006, a "Civil Mobilization Order" (requisition of workers' services) of indefinite duration to put an end to a legal strike of seafarers on passenger and cargo vessels, which do not constitute essential services. According to the allegations, the legal ground for the civil conscription of workers on strike is Legislative Decree No. 17 of 1974 on "civil emergency planning". The GGCL also indicated that the Panhellenic Seamen's Federation (PNO), affiliated to the GGCL, together with the International Transport Workers' Federation (ITF), has submitted a complaint on the above matter to the Governing Body Committee on Freedom of Association on 12 July 2006 (Case No. 2506).

The Committee recalls in this connection that, in its earlier comments addressed to the Government under the present Convention, it has been drawing the Government's attention to certain provisions of Legislative Decree No. 17 of 1974 referred to above, under which the full or partial mobilization of civilians may be proclaimed, even in peace time, in any situation arising suddenly and resulting in a disturbance of economic and social life (section 2(5)). In such circumstances, all citizens may then be called upon to take part in work or to perform services under penalty of imprisonment (section 20(2) and (3), and section 35(1)) and labour legislation is suspended. The Committee referred to the provisions of *Article 2(2)(d)* of the Convention, under which recourse to compulsory labour in an emergency situation should be limited to circumstances that would endanger the existence or well-being of the whole or a part of the population, and pointed out that it should be clear from the legislation that the authority to exact labour may be used only within the above limits.

The Committee recalls that, in its earlier comments, it noted the Government's repeated assurances that Legislative Decree No. 17 of 1974 would be revised after Parliament had adopted the Bill on civil defence dealing with questions of emergency arising from physical or technological causes. The Committee also noted the Government's statement in its 1996 report that, with the adoption in October 1995 of Act No. 2344/95 on the organization of civil defence, which deals with questions of emergency arising from physical or technological causes and provides for the mobilization of groups of volunteers in emergency situations, there was no more problem of application of Legislative Decree No. 17 of 1974.

The Committee has noted that the Government's reports on the application of Conventions Nos 29 and 105 received in October 2006 contain no reference to the observations by the GGCL. However, the Committee notes the report of the Governing Body Committee on Freedom of Association concerning Case No. 2506 referred to above (Report No. 346, Vol. XC, 2007, Series B, No. 2), in which the Committee takes note of the Government's indication that the Ministry of National Defence is elaborating a draft law with a view to partly or wholly abrogating Legislative Decree No. 17 of 1974. The Committee on Freedom of Association has also noted with interest that, according to the Government, pursuant to recent legislative amendments (adoption of the Act concerning "Special Regulations of Migration Policy Issues and other issues under the competence of the Ministry of the Interior, Public Administration and Decentralization" which is awaiting publication in the *Official Gazette*), Legislative Decree No. 17 of 1974 will only apply in times of war. As for requisition in times of peace, section 41 of the new Act provides that the requisition of personal services is possible only in case of emergency, i.e. "every 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".

*While noting this information, the Committee hopes that the necessary measures will be taken in the near future in order to formally repeal Legislative Decree No. 17 of 1974 or amend it by specifying clearly that recourse to compulsory labour under emergency powers is strictly limited to circumstances endangering the existence or well-being of the whole or a part of the population, so as to bring legislation into conformity with the Convention on this point. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.*

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

The Committee has noted a communication dated 11 August 2006, received from the Greek General Confederation of Labour (GGCL), which contained observations concerning the application by Greece of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). The Committee is examining these observations in its comments addressed to the Government under Convention No. 29.

*Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers.* 1. The Committee previously noted that section 239 of the Code of Public Maritime Law, 1973, has been amended by Act No. 2987 of 2002 to the effect that the sanctions of imprisonment (involving compulsory prison labour) provided for 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 only 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. As the Committee repeatedly pointed out, only acts which endanger the ship or the life or health of persons are excluded from the scope of the Convention (see e.g. paragraphs 179–181 of the 2007 General Survey on the eradication of forced labour). 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 notes the Government's statement in the report 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, and that special international maritime instruments have been developed on these issues. The Government also considers

that the imposition of sanctions cannot be linked to forced labour, since all cases of fraud or negligence are investigated by competent courts, which decide whether to impose a sanction or not.

While having duly noted these views and comments, and being fully aware of the importance for sea transport of the factors referred to above, the Committee wishes to draw the Government's attention 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 can be also proved by the fact the new wording of section 239 of the Code of Public Maritime Law makes a 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 wording "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 statement that the imposition of sanctions by the court cannot be linked to forced labour, the Committee points out once again, referring also to the explanations in paragraphs 144–146 of its 2007 General Survey on the eradication of forced labour, 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.

***The Committee therefore reiterates its hope that, in the light of the above considerations, the necessary measures will be taken in order to bring legislation into conformity with the Convention on this point, and that the Government will soon be in a position to provide information on the progress achieved in this regard.***

2. In its earlier comments, the Committee also 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). In its latest report, the Government indicates that the above section provides for the imposition of penal sanctions on seafarers only in case of mutiny against the master, and that such mutiny endangers the safety of the vessel, as well as the persons on board, wherever the vessel is, either in the port or in the open sea.

While having duly noted this indication, the Committee again recalls 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). As the Committee observed in its earlier comments, 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 reiterates its hope 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 restricting their application to the situations where the ship or the life or health of persons are endangered.***

3. As regards 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 involving compulsory labour, the Committee previously 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 notes the Government's indication in the report that Act No. 299 of 25 October 1936 must 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. ***While having noted this indication, the Committee hopes 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 has noted that under sections 40 and 41 of the new Penitentiary Code (Act No. 2776 of 1999), which repealed the Penitentiary Code of 1967, persons sentenced to imprisonment have an obligation to work.

The Committee has duly noted the Government's repeated statement in its reports that the provisions of the above Legislative Decree are opposed to articles 9 and 11 of the Constitution and consequently do not apply in practice. The Government also indicates in its latest report that the process of the formal repeal of the above Legislative Decree has been initiated. ***While noting these indications with interest, the Committee expresses the firm hope that Legislative Decree No. 794 of 1970 will be formally repealed in the near future, in order to bring the legislation into conformity***

with the Convention and the indicated practice, and that the Government will soon be in a position to provide a copy of the repealing text.

The Committee is also addressing a request on certain other points directly to the Government.

## Guatemala

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1989)**

*Articles 1(1) and 2(1) of the Convention. Obligation to do overtime under threat of a penalty.* 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 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 termination of their contract 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 taken or envisaged to ensure compliance with the Convention in this respect.

The Committee notes the Government’s detailed report in reply to the various issues raised by UNSITRAGUA and the questions raised by the Committee, 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 working 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 of the day consecutively, with such failure being equivalent to three full working days”. The Committee notes that, according to the Government’s indications in its report, both cases are awaiting a final ruling. **The Committee requests that the Government provide copies of the rulings when they have been issued.**

(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 outside 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 notes the comments provided by the Union of Operators of Plants, Wells and Guardians of the Municipal Water Company and Allied Workers (SITOPGEMA). With regard to the conditions and limits on the working of overtime, the Committee refers to its observations on the application of the Hours of Work (Industry) Convention, 1919 (No. 1). The Committee also refers to the discussion in the General Survey of 2007 on the eradication of forced labour, paragraphs 132 and 133. **The Committee requests the Government to provide information on the measures taken to ensure that this practice does not amount to “forced or compulsory labour”.**

(c) *National Civil Police.* According to UNSITRAGUA, officers of the National Civil Police are often subjected to the total suspension of rest periods and leave, compelled to work in shifts outside the normal working day, without remuneration and under the menace of penalties, including penal sanctions in the case of failure to comply with such instructions. In cases in which a penalty other than dismissal is imposed, in accordance with the rules of the institution, such a penalty prevents the officer from gaining promotion. In this regard, the Government indicates that, under the terms of Ministerial Accord 301-97 issuing rules governing holidays, leave and rest periods for the national police, the granting of any type of holidays, leave and rest periods is always subordinate to the needs of the service as assessed by those empowered to grant such leave. The Committee also notes the report of the Subdirector General of Public Security, National Police of Guatemala, concerning the suspension of rest periods, leave and the organization of shifts in the national police, which was provided by the Government, indicating that holidays, leave and rest periods have only been suspended at certain periods (for example, the national holidays at the end of the year) or in cases in which public security

may be at risk, and that in all cases shift work consists of eight hours' work followed by eight hours' rest. The Government also provided a report with documentation indicating the dates on which rest periods and holidays were suspended in 2004, 2005 and 2006.

***The Committee takes due note of this information. Under these circumstances, the Committee hopes that the Government will ensure that in practice, irrespective of the organization of hours of work required for the necessities of the service, abuse will be avoided in measures to suspend holidays and rest periods, which may result in practices that can be assimilated to forced labour.***

(d) *State employees (category 029)*. In previous comments, UNSITRAGUA also referred to the situation of state employees belonging to the category 029. The classification of state employees is determined by the budgetary category to which they belong. The category 029 was established to allow the recruitment of skilled professional and technical personnel for specific tasks and periods, without such workers obtaining the status of public employees. Contracts are renewed when sufficient funds are allocated and these workers do not have the right to benefits to which permanent employees are entitled. UNSITRAGUA alleged that workers contracted under this system are not paid for the hours worked in excess of the normal working day, that refusal to work these hours affects the evaluation of their performance and could result in the termination of the contract, with no liability for the State.

The Committee previously noted the Government's reply, according to which "the contracts of persons providing personal services are assigned in financial terms to category 029 of the general budget of the nation and do not constitute employment relationships, but rather civil contracts, for which reason these workers do not have the status of workers, but of providers of services. In its latest report, the Government indicates that in view of these special characteristics there is no dependent relationship under this type of contract and no limitation on working hours, adding that such contracts are of an exceptional and temporary nature. In this respect, the Committee observed that the Convention applies to any type of legal relationship, and even in the absence of a legal relationship, and consequently affords protection against the imposition of forced labour in any labour relationship, including those which do not arise out of a contract of employment. The Committee further notes that the allegations referred to the undue use of such contracts to cover functions that are intrinsically permanent, thereby avoiding employment protection. ***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 labour outside the normal working day.***

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 the minimum wage, have to work in excess of the ordinary hours of the working day, with the additional hours being unpaid. According to UNSITRAGUA, "such cases are occurring with greater frequency in ranches producing bananas as independent producers for the multinational fruit company in the United States known as *Chiquita*, which is present in the ranches in the municipality of Morales in the department of Izabal and on the southern coast of Guatemala". It also referred by way of illustration to the "El Real and El Atlántico ranches in the district of Bogos, in the municipality of Morales in the department of Izabal, where the employers refuse to negotiate unless it is first accepted that piece work is not subject to (ordinary) working hours, in violation of the provisions that are in force". The Committee further noted the reports on the corporate responsibility of *Chiquita Brands International* in which it was indicated that in Guatemala "hourly workers and administrators sometimes work over 60 hours (a week)" and that "workers exceeded the maximum number of overtime hours".

The Committee notes the Governments' detailed reply on these issues in its latest report. With regard to the situation in the El Real and El Atlántico ranches in the municipality of Morales, the unions of the workers in both ranches, with the advice of the legal commission of UNSITRAGUA, have for the past three years been negotiating a collective accord on working conditions, including the form of remuneration, based on the provisions of the Labour Code. According to the Government's indications, in most of these banana ranches agreement has been reached on the calculation of remuneration based on wage tables which provide for piece work or daily rates. When workers agree to work overtime following the working day of eight hours, the mixed day of seven hours and night work of six hours, they are paid 50 per cent higher than the normal wage. The Government adds that daily working hours are applicable irrespective of the form of pay agreed by workers and employers. Furthermore, it indicates that in the case of the El Real and El Atlántico ranches the wage paid is around Q. 2,500.00 and that the minimum wage is Q. 1,273.80 (1 US dollar = 7.5 quetzales). The Committee notes with interest that a commission to address disputes on banana ranches has been established. ***The Committee takes due note of this information and hopes that the Government will continue to provide information on the measures adopted to ensure that work outside normal working hours is not imposed under the menace of dismissal in the plantations sector. The Committee requests the Government to provide information on the activities of the commission to address disputes in banana ranches.***

*Article 25*. The Committee notes with interest the statistics provided by the Government in its report on the complaints received which are considered to be complaints of forced labour in view of the failure to provide pay and the withholding of basic and additional remuneration. ***The Committee hopes that the Government will provide information on the outcome of these prosecutions, with an indication of the type of penalty imposed in cases found to constitute forced labour.***

## **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1959)**

*Article 1(a), (c) and (d) of the Convention. Sanctions for expressing political views, for breaches of labour discipline or participation in strikes.* In earlier comments the Committee noted the Government's statement that some provisions of the Penal Code that may affect 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: "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 communist ideology or advocate any other totalitarian system, or associations whose purposes offend against the law, shall be punished by 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 a public service enterprise 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 has noted that under section 47 of the Penal Code, labour is compulsory for prisoners.

The Committee has pointed out time and again in its comments 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 has requested the Government to repeal them. With regard to participation in strikes by public servants and employees of public services deemed to be essential, the Committee refers the Government to its comments on the application of Convention No. 87 in which it also asks the Government to repeal the provisions in question. *The Committee hopes that the Government will take the necessary steps to align the legislation with the practice, which, according to the Government, already exists, and to ensure observance of the Convention.*

## **Guyana**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1966)**

*Articles 1(1), 2(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 with interest 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.*

## **Haiti**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1958)**

1. *Exploitation of children employed as domestic servants known as "restaveks".* For a number of years now, the Committee has been commenting on the working conditions of children employed as domestic servants, who are known in Creole as "restaveks" from the French "rester avec" or "to stay with". A report submitted to the Working Group on Contemporary Forms of Slavery of the United Nations High Commission on Human Rights and concordant comments received in 2002 from the International Confederation of Free Trade Unions (ICFTU, now the International Trade Union Confederation, ITUC) and the Coordination Syndicale Haïtienne (CSH) described the practice. This practice involves poor families sending or selling their children to city-dwelling, generally more affluent families, to work as domestic servants in exchange for room and board, and education. In reality, many of these children are victims of exploitation; they are forced to work long hours without remuneration; they are discriminated against in relation to other members of the family; they are poorly housed, poorly fed and are sometimes ill-treated; 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). Moreover, it has been emphasized that although placing children in families to work as domestic servants is only authorized under the Labour Code (section 341) from the age of 12 onwards, many children are placed in families before reaching this age.

The Committee emphasized that domestic work carried out by children is not necessarily forced labour. Nevertheless, the Committee was concerned about the exploitative conditions of which the children employed as domestic servants, within a 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 for them to leave their work and the family in which they have been placed, such labour may come under the definition of forced labour provided for in the Convention. The Committee asked the Government to respond to these allegations and urged it to take the necessary action without delay, and also to provide information on the measures taken to ensure the effective implementation of the existing repressive provisions in this area.

The Committee notes that the United Nations Committee on the Rights of the Child, in its concluding observations concerning Haiti, published in March 2003 (CRC/C/15/Add.202), is deeply concerned about the situation of child domestic workers. The UN Committee notes with concern that these children, most of them girls, are forced to work long hours under harsh conditions and without any financial gains, and are subjected to ill treatment and abuse, including sexual abuse. The UN Committee recommends most notably the adoption of a comprehensive strategy.

The Committee notes that the Government, in its last two reports, reaffirms its commitment to protect vulnerable children and notably those working as domestic servants. The Government confirms that, children who are placed in families in big cities in the hope of being well fed and of having the opportunity to go to school, often end up in families living in precarious conditions, and are, on the contrary, ill-treated, beaten and abused. The Government undertook to strengthen the Social Welfare and Research Institution (IBESR) which, over the last few years, has been able to monitor a considerable number of children who were victims of rape and ill treatment while in domestic service. The Government also refers, to certain steps that it has taken, such as:

- the validation in October 2006 of a National Protection Plan;
- the implementation in 2007 of a number of training activities for officials of the Ministry of Social Affairs and Labour who are involved in the area of child protection;
- the repeal of section IX 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 5 June 2003; and
- the programme entitled “Education for All”, which targets vulnerable children, particularly those from poor families in rural areas, who, in search of an education, have been sent to work as domestic servants in large cities, so that they can attend schools in those areas.

The Committee notes with interest that the abovementioned Act of 2003 prohibits abuse and violence of any kind against children, as well as child exploitation, including 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 also notes that by repealing section IX of the Labour Code which relates to children in service, the Act has abolished section 341 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 Labour Code provisions relating to the host family’s obligation to obtain a permit and comply with the conditions required by the IBESR. Henceforth, pursuant to section 3 of the Act, a child may be entrusted to a host family within the context of a relationship of assistance and solidarity. He or she must be treated as a member of the family and enjoy the same privileges and prerogatives as the other children in the family. Any report of an abused or ill-treated child is addressed to the Ministry of Social Affairs which may refer the matter to the competent judicial authority (section 4 of the Act).

The Government also states that it is not able to provide exhaustive data and that it will do its utmost to make up for this lack of information and documentation in its next report.

The Committee notes all this information. It is aware of the economic difficulties facing the country and notes the Government’s reaffirmed willingness to protect vulnerable children, particularly child domestic workers. ***The Committee hopes that the Government will, as it promised in its last report, be able to provide information on the concrete measures adopted to combat the exploitation of numerous children placed in families and on the National Protection Plan adopted in 2006. In this regard, the Committee would like the Government to communicate detailed information on the following points:***

- *measures taken to assess the extent and the characteristics of the phenomenon.* The Committee considers that the general term “restavek” covers a number of different situations and believes that the phenomenon of child domestic labour should be more accurately targeted in order to find effective solutions to the problem. ***The Committee would like the Government to provide information on the number of child domestic workers placed in host families, indicating their age and in particular the percentage of children who have not reached the minimum employment age and yet are employed as domestic workers;***

- *measures taken to ensure that regular inspection visits are made to the host family. The Committee would like the Government to specify how, in practice, the authorities ensure that host families do not exploit the children entrusted to them (competent authorities, types of checks carried out, etc.);*
- *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 the extent to which they are brought before the competent jurisdiction: labour courts or criminal courts depending on the gravity of the violation observed.* The Committee notes that the abovementioned Act of 2003 does not provide for penalties against persons responsible for the abuse, ill treatment or inhuman treatment that it prohibits. In this regard, the Committee emphasizes that the penalties imposed for exacting forced labour must be of a dissuasive nature. It recalls that, under *Article 25 of the Convention*, the penalties imposed shall be really adequate and strictly enforced. *The Committee would like the Government to indicate whether proceedings have been brought against persons who exploit child domestic workers and, if so, the penalties imposed. Furthermore, the Committee would like the Government to communicate information on the measures taken or envisaged to protect, help and reintegrate child victims of exploitation.*

2. *Trafficking in persons, including children.* The Committee notes that the Act on the Prohibition and Elimination of All Forms of Abuse, Violence, Ill Treatment or Inhuman Treatment against Children of 2003 cites, among other examples of ill treatment, inhuman treatment or exploitation, the 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.

The Committee notes that, in its abovementioned concluding observations, the UN Committee on the Rights of the Child is deeply concerned at the high incidence of trafficking in children from Haiti to the Dominican Republic. The UN Committee notes that these children, once separated from their families, are forced to beg or work in the Dominican Republic. *The Committee asks the Government to provide information on this phenomenon and on the measures taken to combat it.*

The Committee has also noted the report by the Research Mission of the General Secretariat of the Organization of American States (OAS) on the situation regarding people trafficking in Haiti (September 2006). This mission concluded that “the analysis of the quantitative and qualitative data shows a trend towards the systematization trafficking in persons in Haiti. This trend can be explained by the deterioration of the socio-economic and political situation in the country over recent years which precludes an effective response to the basic needs of the population and opens the way for an increase in all forms of human exploitation and unlawful economic activity”. *The Committee would like the Government to provide information on the measures taken to combat the trafficking in persons to the Dominican Republic and other neighbouring countries, both at the legislative (adoption of a text incriminating trafficking in persons) and judicial (arrest and punishment of the guilty parties) levels and in terms of raising public awareness, in particular that of persons exposed to this risk.*

## India

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1954)**

1. The Committee has noted the Government’s reports received in 2005 and 2006 together with its two replies to the communications received from the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 31 August 2005. The Committee also notes the further communication of the ITUC dated 30 August 2007 which was forwarded to the Government on 17 September 2007, in order to afford it the opportunity to make comments on the matters raised therein.

#### ***Bonded labour and the need to identify the magnitude of the practice***

2. The Committee has previously referred on many occasions to the urgent need for a comprehensive, large-scale national survey on bonded labour, using appropriate methodologies, in order to ascertain the scope and order of magnitude of the practice and of the efforts needed to identify, free, and rehabilitate workers who are exploited by it and to prosecute those who use it to exploit them. This issue is again a subject of the 2005 communication from the ICFTU referred to in paragraph 1 above.

3. The ICFTU in its 2005 communication on this topic, adverted to a number of matters including indications that:

- according to the 2005 ILO report, “A global alliance against forced labour”, a commission set up in 1995 by the Supreme Court to investigate bonded labour cases in Tamil Nadu conducted a large-scale survey and concluded that, in that state alone, there were more than 1 million bonded labourers spread across 23 districts and 20 occupations;
- while the Government has denied the existence of bonded child labour in the silk industry, a report by the Centre for Education and Communication (CEC), in conjunction with Anti-Slavery International, highlights a 1998 report by the Labour Commissioner indicating that 3,077 cases of child bonded labour were found in silk reeling units in areas of the Bangalore district of Karnataka;

- the number of people identified by the Government since 1976 does not represent the total number of bonded labourers in the country. It again referred to the systematic survey on bonded labour conducted in 1978–79, the Ghandi Peace Foundation (GPF), and the National Labour Institute (NLI), an autonomous body of the Ministry of Labour, which estimated that 2.6 million bonded labourers were employed in agriculture alone.

4. The Committee notes the Government's response in its 2006 report and the annex attached thereto, which indicated that:

- as a result of government-funded local surveys, during the period 2000–01 to 2005–06, 15,111 bonded labourers were identified in 149 districts and all of them were rehabilitated;
- the incidence of bonded labour, as reported from state governments, declined from 2,465 bonded labourers in 2003–04, to 866 in 2004–05, to 397 during the year 2005–06; this decline, according to the Government, is “a result of concerted efforts made by the Government through various anti-poverty programmes, awareness, sensitization, etc.”;
- the Government considers that the figures quoted by the non-governmental agencies regarding incidence of bonded labour relied upon by the ICFTU are invalid, as they were not derived from the use of appropriate statistical tools for collecting primary data;
- the Government reiterates that it does not consider it necessary to conduct a large-scale national survey on bonded labour, since the central Government already provides grants to the states to conduct district-wide surveys, and that a national survey is not possible to carry out because of the need to use qualitative methods for collecting appropriate data.

5. In relation to the need for a comprehensive national survey, the Committee notes the 2004–05 Annual Report of the National Human Rights Commission (NHRC) from its Internet site, indicating that, pursuant to the recommendations of its Expert Group on Bonded Labour, the commission has since 2003 conducted workshops for sensitizing and educating district magistrates, police superintendents, NGOs and other field officials involved in the implementation of the Bonded Labour System (Abolition) Act, 1976 (BLSA); that such workshops have “proved useful in identifying significant issues relating to identification, release and rehabilitation of bonded labour”; and that among the “important points” emerging from this process was the need for a “fresh, comprehensive survey to determine the magnitude of bonded labour”.

6. The Committee also notes from a news update dated 28 June 2007 and posted on the Internet site of the NHRC, that during a national workshop held on 28 June 2007 a former NHRC special rapporteur, who chaired a session on adequacy and effectiveness of administrative mechanisms, called for “effective surveys to identify bonded labour”.

**7. *The Committee once again urges the Government to undertake a large-scale national survey on bonded labour as a matter of priority, using valid and appropriate statistical methodologies, and requests that the Government supply information in its next report on the measures taken or envisaged towards this end.***

### ***Vigilance committees***

8. The Committee in its previous observation requested that the Government continue to provide information on the vigilance committees (VCs) – the bodies constituted by state governments at district and subdivision levels pursuant to section 13 of the BLSA to, inter alia, advise district magistrates to ensure that the provisions of the BLSA are properly implemented, survey for the occurrence of bonded labour offences, monitor the number of such offences, and provide for the rehabilitation of freed bonded labourers – as well as to provide information on measures taken or contemplated to improve the effectiveness of the VCs in carrying out these activities.

9. The Committee has noted that the ICFTU, in its 2005 communication, referred to the 2001–02 Annual Report of the NHRC, which states that the VCs “were not in position in many places” and even where constituted “have become defunct over the years”, and that they “have not made worthwhile contributions anywhere in terms of the identification, release and rehabilitation of bonded labour”.

10. The Government in its 2006 report indicates that state governments have all confirmed the constitution of VCs, that “the meetings are being held regularly”, and that state governments are frequently requested to ensure that such committees are duly constituted or reconstituted. The Government, in reply to the ICFTU comments, stated in its 2005 report that “there might be a few instances when the VCs did not meet regularly (but) these instances cannot lead to a conclusion that (they) were not ... delivering useful results”.

11. In relation to the operation of VCs, the Committee notes the following from the Annual Report 2004–05 of the NHRC, that:

- in Rajasthan, the State Labour Committee on Bonded Labour was not meeting regularly and had held no meetings after 10 September 2001;
- in Maharashtra, the VCs “are not meeting regularly and the detection of bonded labour is practically nil in the State”; and

- in Punjab, there had been no reported detection of bonded labour since the previous review, and despite advice from the commission, the state government “does not seem interested in taking up the Awareness Generation Programme”.

12. The Committee further notes that the general recommendations which have evolved out of the series of sensitization and awareness-raising workshops conducted by the NHRC and referred to above, have included recommendations:

- for a convergence of the work done by government agencies and NGOs;
- for the constitution of district and subdivisional level VCs;
- for the VCs to examine the status of already rehabilitated bonded labourers, to plan for rehabilitation of identified bonded labourers, and to monitor bonded labour-prone areas and industries; and
- for the periodic review of VCs and their functions.

13. ***The Committee hopes that in its next report the Government will address itself to the shortcomings of the VCs in fulfilling their mandate under the BLSA, which are clearly evidenced by a preponderance of recent information from governmental and other sources, including that cited above, and that it comment on recommendations concerning the apparent need for other local institutions to assume the functions of the VCs.***

### **Law enforcement**

14. In its earlier comments, the Committee referred to the problem of law enforcement in connection with the eradication of bonded labour and sought information on the number of prosecutions, convictions and acquittals in various states under the BLSA and also questioned the adequacy of the penalties imposed. The Committee previously observed that, in the light of *Article 25 of the Convention*, the number of prosecutions launched under the Act did not appear to be adequate in relation to the number of identified and freed bonded labourers reported by the Government.

15. The Committee notes that the ICFTU in its 2005 communication referred to a finding by the NHRC reported in its Annual Report 2001–02 that, “the prosecution of offenders under the bonded labour system has, in fact, been neglected in every state reviewed”.

16. The Government in its 2005 report referred to section 21 of the BLSA, under which the power of judicial magistrates to try offences may be conferred upon executive magistrates, and stated that the Act “has enough penal provisions to deal with the issue of bonded labour”, and that the judiciary in India “is proactive in dealing with the issue of bonded labour”.

17. The Committee notes that the Government in its 2006 report states that, although exact information on the number of prosecutions launched for offences relating to bonded labour during the period under review was not available, according to statistics reported by state governments, there had been 5,893 prosecutions initiated; convictions obtained in 1,289 cases; and fines of 107 million rupees so far realized under the BLSA. The Government adds that the low rate of prosecutions could be explained, in part, by the existence in rural and informal sectors of society of an informal system of grievance and dispute resolution centred on village-level bodies, known as “Nyaya Panchayat” or “Lok Adalats”.

18. The Committee also notes the following findings of the NHRC published in its 2004–05 Annual Report:

- in Uttar Pradesh, 55 bonded labourers were identified and freed in 2004–05, but the “prosecution aspect remains totally neglected”;
- in Madhya Pradesh, a total of 22 criminal cases under the BLSA had been registered since 1999–2000 and 20 cases were pending trial, but the power of executive magistrates to try offences conferred under section 21 of the BLSA was being used “reluctantly”; and
- in Jharkand, orders regarding the empowerment of executive magistrates to exercise powers of judicial magistrates under the BLSA had not yet been issued.

19. The Committee further notes from the 2004–05 Annual Report of the NHRC that among the “important points” emerging from the series of sensitization and awareness-raising workshops on bonded labour conducted by the commission since 2003 in association with the Ministry of Labour and Employment and concerned state governments, and referred to above, is the need for “prosecution of offending employers”.

20. ***The Committee hopes that in its next report the Government will provide comprehensive information about the practical workings of the village institutions referred to above, including:***

- ***detailed information about their geographic prevalence and detailed statistics, for every state, concerning the number of bonded labour complaints lodged with these bodies;***
- ***the number of bonded labour cases adjudicated through them; and***
- ***the outcomes of such cases.***

***The Committee also asks that in its next report the Government supply detailed information about measures it is taking or contemplating to address the serious and ongoing deficiencies in the prosecution of cases of bonded labour and, more generally, in the enforcement of the penalties and sanctions prescribed under Chapter VI of the BLSA, as***

*well as information assessing the practical results of the ongoing sensitization and awareness-raising workshops conducted by the NHRC for law enforcement officials and members of the judiciary.*

### **Release and rehabilitation**

21. The Committee notes the indication in the 2005 observations of the ICFTU that significant problems exist in policies and programmes for the release and rehabilitation of bonded labourers, which include, among other things, corruption and bribery in the distribution of rehabilitation packages; discriminatory treatment in the provision of rehabilitation packages against bonded labourers identified by non-governmental organizations; and the failure of rehabilitation resources to provide economic security and sustained livelihoods to freed workers.

22. The Committee notes the reply of the Government in its 2005 report to the ICFTU comments in which it indicated that efforts were being made to upgrade the skills of beneficiaries required in their previous occupations; referred to directions to state governments to dovetail rehabilitation packages with other poverty-alleviation programmes; and asserted that no case of relapse into bondage had been received from beneficiaries already rehabilitated.

23. The Committee also notes from a news update of the NHRC dated 28 June 2007 and referred to above, that in the course of a national workshop held on 28 June 2007, the secretary of the Ministry of Labour and Employment stated that “no data on the freed bonded labour is available and how their rehabilitation has taken place is still a question”, and that the secretary also called upon state officials to initiate projects so as to converge development schemes for the benefit of freed bonded labourers.

**24. *The Committee hopes that in its next report the Government will supply detailed information about the measures it refers to for upgrading the skills of freed bonded labourers and about its policy of integrating rehabilitation packages with other poverty-alleviation programmes, including information about the implementation and practical outcomes of these policies and programmes.***

**25. *The Committee also requests that in its next report the Government provide detailed information about measures it is taking or contemplating to address the significant problems and shortcomings, exemplified in the reports discussed above, in the Government’s policies and programmes for the release and rehabilitation of identified bonded labourers.***

### **Child labour**

26. The Committee has previously raised a number of questions concerning efforts to eliminate child labour falling under the Convention (i.e. in conditions which are sufficiently hazardous or arduous that the work concerned cannot be considered voluntary). The Committee expressed the hope that the Government would redouble its efforts in this field, particularly with regard to the identification of working children and strengthening the law enforcement machinery, in order to eradicate the exploitation of children, especially in hazardous occupations; and it also requested the Government to supply the results of the latest census on the number of working children in the country.

27. The Committee notes the indications of the Government in its 2006 report, including the following statements:

- based on census data from 2001 there are an estimated 12.63 million child labourers nationally in the age group 5–14, an increase from the estimate of 11.28 million based on the 1991 Census;
- during the 10th Five-Year Plan (2002–07) the National Child Labour Projects (NCLPs) scheme for the rehabilitation of working children withdrawn from hazardous occupations, launched by the Ministry of Labour and Employment on 15 August 1994, was expanded in scope from 100 to 250 districts;
- the central Government has increased the budget allocation for NCLPs from 2,500 million rupees under the previous plan to 6,670 million rupees under the current Five-Year Plan;
- increased monitoring of government schemes for eliminating child labour has taken place at state and district levels.

28. The Committee notes with interest that the Child Labour (Prohibition and Regulation) Act, 1986 (CLPA), was amended in October 2006, in order to extend the prohibition of employment of children to occupations involving employment in domestic service, hotels, motels, restaurants, road-side eateries, tea shops, resorts, and recreational centres.

**29. *The Committee requests that in its next report the Government supply information about the application and enforcement of the prohibitions under this amendment to the CLPA.***

30. The Committee notes, with regard to enforcement of the CLPA, the statement of the Government in its 2006 report that it was “moving in the direction” of creating suitable enforcement machinery. The Committee, however, also notes the statistical data (as reported by state governments and the Organisation of the Chief Labour Commissioner) posted on the Internet site of the National Child Labour Project of the Ministry of Labour and Employment. This data include the following comparative statistics for the periods 2004–05 and 2002–03:

- in 2004–05, 242,223 inspections were conducted and 16,632 violations were detected, whereas in 2002–03, 26,411 violations were detected;
- in 2004–05, 2,609 prosecutions were launched compared to 9,159 in 2002–03; and
- in 2004–05, there were 1,385 convictions and 447 acquittals, in comparison to 4,013 convictions in 2002–03.

31. The Committee notes that there has been a steep drop in the detection of violations and initiation of prosecutions during 2004–05, when at the same time the estimates indicate a continuing increase in child labour. The Committee also notes that no data were reported on the nature of the sanctions or sentences imposed in cases where convictions were achieved.

**32. The Committee asks the Government to provide information in its next report on the nature of sanctions or sentences received in relation to successful convictions, supplying copies of the court decisions (including those of the Supreme Court) concerning the work of children in hazardous occupations. The Committee also asks the Government to comment on the drop in the detection of violations and initiation of prosecutions during 2004–05 and also any explanation for the comparatively high rate of acquittals. Further, the Committee requests the Government to elaborate on what is meant by its assertion that the Government is committed to “moving in the direction” of creating suitable enforcement machinery.**

33. The Committee notes two news releases of the Ministry of Labour and Employment dated 20 August 2007 and 22 August 2007, posted on the Internet site of the Government’s Public Information Bureau, indicating that the Ministry was now implementing its scheme of NCLPs in 250 districts in a total of 20 states. Under the scheme, these children were placed into special schools and provided with accelerated bridging education, vocational training, mid-day meals, stipends, and health check-up facilities. At present, 343,000 children were enrolled in the special schools and 457,000 children had already been mainstreamed into the formal education system since the scheme’s inception. An expansion of the scheme along with an enlargement of its scope through additional components during the 11th Five-Year Plan (2007–12) was under consideration. The programme covered children working in notified hazardous occupations in the agricultural sector, among others. In addition, a scheme of grants-in-aid to voluntary agencies for the benefit of children withdrawn from hazardous occupations was being implemented in other districts not covered by the NCLP scheme.

**34. The Committee hopes that in its next report the Government will provide updated and detailed information about the implementation in all 20 states of the NCLPs scheme for rehabilitating child labour withdrawn from hazardous industries and about the status of plans to enlarge its scope under the next Five-Year Plan.**

#### **Prostitution and commercial sexual exploitation**

35. In its earlier comments, the Committee welcomed the adoption of a National Plan of Action to combat trafficking and commercial sexual exploitation of women and children, among other positive measures taken by the Government, as well as the Government’s intention to review the existing legal framework including the Immoral Trafficking (Prevention) Act, the India Penal Code, the Criminal Procedure Code and the Evidence Act, with a view to making the punishment more stringent for traffickers but at the same time, more victim-friendly. The Committee also expressed the hope that measures would be taken to compile reliable statistics concerning the extent and magnitude of the problem of trafficking and commercial sexual exploitation in India, including the problem of child prostitution.

36. The Committee notes with interest the enactment of the Commissions for Protection of Child Rights Act, 2005 (CPCRA), referred to by the Government in its 2006 report. The Committee notes that the purpose of the Act is to provide for the constitution of a national commission and analogous state-level commissions “for providing speedy trial of offences against children”. The Committee notes some of the salient points of the CPCRA with respect to the functions and powers of the national commission, which include:

- inquiring into violation of child rights and recommend initiation of proceedings in such cases (section 13(1)(c));
- examining all factors that inhibit the enjoyment of rights of children such as trafficking and prostitution and to recommend appropriate remedial measures (section 13(1)(d));
- inquiring into complaints relating to the deprivation and violation of child rights and take up such matters with appropriate authorities (section 13(1)(j));
- forwarding any case to a magistrate, who shall hear the complaint against the accused as if it were forwarded under section 346 of the Code of Criminal Procedure (section 14(2));
- where an inquiry discloses a violation “of a serious nature or contravention of provisions of any law”, recommending the initiation of proceedings for prosecution (section 15(i));
- commissions constituted by state governments at the state level are accorded functions and powers analogous to those of the national commission (section 24).

37. The Committee notes the Government’s reference to proposed legislation, the draft Offences against Children Bill, 2006 (DOCB). The Government states that the DOCB seeks to improve deficiencies in the India Penal Code, which does not separately take cognizance of various offences against children, and that it specifically includes the offence of sexual exploitation of children and trafficking and provides for corresponding sanctions.

**38. The Committee hopes that in its next report the Government will supply information concerning the practical application of the provisions of the Commissions for Protection of Child Rights Act, 2005 referred to above, as they relate to trafficking of children for purposes of commercial sexual exploitation or prostitution. The Committee hopes that the Government will soon enact the draft Offences against Children Bill and asks the Government to supply updated information on the prospects for such action.**

39. The Committee also notes from the Internet site of the Parliament of India that the Immoral Traffic (Prevention) Amendment Bill, 2006 was introduced in the Lok Sabha in May 2006 and adopted by the Parliamentary Standing Committee on Human Resource Development in November 2006 and thereafter reported back to both Houses of Parliament. The Bill amends the Immoral Traffic (Prevention) Act 1956 (ITPA), which makes trafficking and sexual exploitation of persons for commercial purposes a punishable offence. Among other things, the Bill provides for more stringent punishment of offenders; deletes provisions relating to the prosecution of prostitutes for solicitation; defines the term “trafficking in persons” and punishes trafficking in persons, including children, for the purpose of prostitution; increases penalties for certain trafficking offences; and provides for the constitution of authorities at the central and state levels to combat trafficking.

40. Further, the Committee notes from a press release dated 20 August 2007, posted on the Internet site of the Government’s Press Information Bureau (PIB), that a pilot project on combating trafficking of women and children for sexual exploitation was being implemented; that a “Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Reintegration of Victims of Trafficking and Commercial Sexual Exploitation” had been included in the Annual Plan, 2007–08; and that the Central Advisory Committee on Combating Child Prostitution, headed by the Secretary of the Ministry of Women and Child Development (WCD), was reviewing the States’ activities in combating trafficking and prostitution every quarter.

41. *The Committee hopes that in its next report the Government will supply updated and detailed information on: the status of the Immoral Traffic (Prevention) Amendment Bill, 2006; on the progress in the implementation of pilot projects aimed at combating trafficking of women and children for commercial sexual exploitation; and on the work of the central advisory committees within relevant ministries in terms of measures to combat/prevent trafficking for commercial sexual exploitation and prostitution and to review states’ activities in this area.*

## Indonesia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1950)**

While noting the Government’s report, the Committee regrets that it only provides very brief replies to the many issues raised in its previous observation. The Committee recalls that its comments concerned the trafficking in persons and the exploitation of migrant workers. With regard to the issue of forced labour by children on fishing platforms, the Committee refers to the observation that it is making in relation to the Worst Forms of Child Labour Convention, 1999 (No. 182).

*Articles 1(1) and 2(1) of the Convention.* 1. *Trafficking in persons for exploitation.* In its two previous observations, the Committee referred to the observations made by the International Confederation of Free Trade Unions (ICFTU), which has since become the International Trade Union Confederation (ITUC), containing worrying information on the trafficking in persons, particularly for the purpose of prostitution. The ITUC indicated that 20 per cent of the 5 million Indonesian migrant workers were reported to be victims of trafficking. The Government recognized the phenomenon and had taken a certain number of measures to combat it. At the 92nd Session of the International Labour Conference in June 2004, the problem was examined by the Conference Committee on the Application of Standards during the discussion on the application of the Convention by Indonesia. The Government provided certain information on that occasion, as well as in its subsequent report. The Committee noted all this information and observed with interest that the Government, which is aware of the importance of the problem of the trafficking in persons, was continuing to adopt awareness-raising, prevention and repressive measures, particularly through the reinforcement of the capacities of the police and labour inspectors, regional cooperation and ILO technical assistance. The Committee nevertheless requested the Government to provide more concrete and detailed information, particularly on the assessment of the scope and nature of the phenomenon of trafficking, the penalties imposed and the results achieved in practice through the action carried out in the context of the National Action Plan for Abolishing Woman and Child Trafficking, adopted in December 2002.

In its report provided in August 2006, the Government refers to certain measures that it has taken to combat trafficking, such as sending inspectors to the points of entry into the country of migrant workers, as well as lawyers and police liaison officers to certain countries of destination of victims of trafficking. According to the Government, results have been achieved in practice. However, the Committee notes that the Government has not provided any information on the assessment by the Government as to the extent and nature of the phenomenon of trafficking. With regard to the penalties imposed, the Government indicates that it has attached to its report examples of court rulings. However, the Committee notes that the Government’s report only contains a list of seven cases, without dates or references to the courts which ruled on the cases.

The Committee notes with interest the adoption of Law No. 21/2007 of 19 April 2007 on the elimination of the crime of human trafficking. It notes that the Law establishes penalties of from three to 15 years of imprisonment and fines of between 120 million and 600 million Rupiahs (articles 2–6), which may be supplemented by one third in certain aggravating circumstances such as causing serious injury or serious mental disorder (article 7(1)), where the crime of trafficking is committed by a state administrator (article 8), by an organized band (article 16) or where the victim is a child under 18 years of age (article 17). In the event of the death of the victim, the penalty is between a minimum of five years’ imprisonment and a maximum of life imprisonment (article 7(2)). The Committee further notes that the Law establishes

penalties for the crime of trafficking in human beings when it is committed by a corporation through sentences of imprisonment and fines against its executives, combined with additional penalties such as revoking the business licence, confiscating assets resulting from the crime and prohibiting the executives from establishing a corporation in the same field (article 15). Articles 19–24 provide for sentences of imprisonment and fines for related crimes, such as the falsification of documents with a view to facilitating the trafficking in human beings, inciting a witness to commit perjury and revealing the identity of witnesses or victims. The consent of the victim is not a ground for abandoning proceedings against those responsible for the crime of the trafficking in human beings (article 26).

The Committee further notes other provisions of the Law: articles 43–55 which relate to the protection of witnesses and victims of the trafficking in human beings; articles 56–58 concerning the preventive measures that are to be adopted at the regional and national levels to combat trafficking; and article 59 respecting international cooperation in the field of trafficking. The Committee also notes the provisions of Law No. 13/2006 on the protection of witnesses and victims. It further notes that a technical cooperation programme with the ILO was established in September 2006 for two years to combat forced labour and the trafficking of Indonesian migrant workers.

The Committee notes the efforts made by the Government, particularly with regard to the adoption of legislation to combat the trafficking in human beings. *In view of the persistence of the practice of trafficking in Indonesia, and the gravity and extent of the phenomenon, as illustrated by many sources, the Committee considers that the Government needs to redouble its efforts to combat trafficking and to take the appropriate measures to ensure the effective application of the legislation. The Committee emphasizes the need to take action both to reinforce prevention and to impose penalties for this crime, and also emphasizes the importance of adopting measures to assess the extent and nature of the phenomenon of trafficking. It regrets that the Government has not provided fuller information in this respect. The Committee trusts that the Government will provide detailed information in its next report, particularly with regard to:*

- *the measures adopted or envisaged for the prevention of trafficking, and particularly the programmes and policies formulated under article 57 of Law No. 21/2007, the activities of the various task groups envisaged by article 58(2) and (3), and the measures adopted or envisaged under article 59 in the field of international cooperation to combat trafficking;*
- *the measures taken in accordance with Article 25 of the Convention to ensure that the penalties envisaged by the national legislation are really adequate and are strictly enforced, including information on the charges brought for trafficking, the prosecutions initiated against those responsible for this crime and the penalties imposed (please provide copies of court rulings issued under Law No. 21/2007);*
- *the measures for the protection of witnesses and victims of trafficking adopted under Law No. 21/2007 and Law No. 13/2006 respecting the protection of witnesses and victims of trafficking, the operation of the Witness and Victim Protection Institution (LPSK), including a copy of the periodical report that the LPSK has to submit every year as a minimum to the House of Representatives under article 13(2) of Law No. 13/2006.*

2. *Vulnerable situation of Indonesian migrant workers with regard to the illegal exaction of forced labour.* In its previous observations, the Committee noted the particularly worrying conditions in which Indonesian migrant workers are exploited in various countries, based on the comments provided by the ICFTU (currently the ITUC) in 2003 and 2004. The main problems concerned the need to go through recruitment agencies and the absence of legislation establishing the rights of Indonesian migrant workers and regulating the process of migration for employment, with these factors facilitating the exploitation of such workers. The Committee also noted the abusive practices of certain recruitment agencies throughout the recruitment process and during the period for which migrant workers are in the country of destination. In this respect, the Committee observes that these agencies charge migrant workers exorbitant enrolment and training fees, thereby obliging them to take on a substantial debt which places them in a situation of vulnerability from the outset to exploitation and forced labour. Recruitment agencies force workers to live in training camps, sometimes for up to 14 months, where they may be deprived of freedom of movement and forced to work free of charge for recruitment agency staff. Then, once they have arrived in their country of destination, migrant workers have to reimburse the debt to the agency which recruited them, by paying back several months' wages, with the result that they work for long periods without pay.

In reply, the Government accepted that the recruitment of Indonesian migrant workers came under its responsibility and it provided information on the legal provisions regulating recruitment agencies. It acknowledged that abuses could occur throughout the recruitment process and indicated that it therefore supervises the activities of recruitment agencies and imposes sanctions on those which do not comply with the regulations. It further indicated that it is aware of the lack of bargaining power of migrant workers and for this reason is seeking to improve their conditions through the conclusion of protocol agreements with host countries. While welcoming the Government's initiatives, the Committee requested it to continue providing information, particularly on:

- the nature of the supervision carried out on the activities of placement agencies on the national territory, particularly with regard to the verification of placement agreements and employment contracts and compliance with their terms, the cost of placement actually borne by the worker, the training provided, the living conditions in training centres and dormitories and waiting periods;

- the means available to the Ministry of Manpower and Transmigration to carry out these controls;
- the nature of the infringements reported, court decisions and the penalties imposed;
- the facilities provided (assistance, redress mechanisms, etc.) to Indonesian migrant workers who are exploited in host countries and the protocol agreements signed with these countries.

In its report provided in August 2006, the Government indicates that it is taking measures in the field of labour inspection to ensure compliance with the legislation. The contracts signed by migrant workers have to be notified to labour inspectors and officers of the Board for the Placement and Protection of Indonesian Workers. Controls are carried out of recruitment agencies and administrative penalties up to the withdrawal of licences are imposed in the event of violations. Moreover, controls are carried out at the places of embarkment of migrant workers. Furthermore, in certain countries, attachés are assigned to embassies with responsibility for social affairs to provide assistance to migrant workers and control recruitment agencies.

The Committee notes the adoption of Law No. 39/2004 on the placement and protection of Indonesian workers abroad and the Regulation of the Minister of Manpower and Transmigration No. PER.19/MEN/V/2006 of 12 May 2006 on the placement and protection of Indonesian workers abroad. The Committee notes that under article 5 of Law No. 39/2004, the Government shall regulate and supervise the placement and protection of migrant workers, while part of its authorities and/or duties may be delegated to regional governments. Under article 7(c), the Government has to establish and develop a system of information on the placement of migrant workers. With regard to the enrolment and training fees that recruitment agencies impose upon migrant workers at the outset, the Committee notes that article 76 of the Law provides that private placement operators for Indonesian workers may only impose costs in relation to the arrangement of personal identity documents, medical examinations, training and certification of competence. By virtue of this article, the components of these costs have to be transparent. However, article 34 of Regulation No. PER.19/MEN/V/2006 adds new components to the costs which may be charged by agencies to migrant workers, including the costs of accommodation and subsistence during the period when the worker is lodged by the agency. Under articles 94 and 95 of Law No. 39/2004, placement and protection agencies for Indonesian workers are responsible for the implementation of policies on the placement and protection of Indonesian workers abroad. The Law also contains provisions relating, inter alia, to rights and obligations, insurance, accommodation, repatriation, the protection of Indonesian migrant workers, among others, by Indonesian embassies, the settlement of disputes which may arise between a worker and a placement agency and the administrative and criminal sanctions which may be imposed on individuals and corporations for violations of the provisions of the Law.

The Committee also notes the study entitled “Using Indonesian law to protect and empower Indonesian migrant workers: Some lessons from the Philippines”, published in June 2006 by the ILO Office in Jakarta in the context of the ILO project on mobilizing action for the protection of domestic workers from forced labour and trafficking in South-East Asia under the Special Action Programme on Forced Labour (SAP-FL). According to the study, although Law No. 39/2004 contains some provisions that are favourable to migrant workers, it nevertheless has serious shortcomings, such as the focus on the placement of migrant workers rather than on their protection. The study concludes that this Law lacks clarity on several issues, such as the attribution of responsibility for the enforcement of migrant workers’ rights. But the weakest aspect of the Law is that its enforcement has been minimal if not non-existent.

Finally, the Committee notes the information provided by the Government in its report concerning the preparation of a draft Memorandum of Understanding with the Government of Malaysia on the recruitment and placement of domestic workers. It notes that the report of the United Nations Special Rapporteur on the human rights of migrants, dated 2 March 2007 (A/HRC/4/24/Add.3), refers to a Memorandum of Understanding on domestic migrant workers concluded with Malaysia on 13 May 2006 in Bali (paragraph 36 of the report). According to this report, the Memorandum of Understanding covers procedural matters regarding recruitment, but makes little mention of employees’ rights (paragraph 37). Moreover, it leaves migrants in a vulnerable situation as it does not guarantee standard labour protections, nor does it include measures to prevent and respond to cases of abuse. Appendix A.xii of the Memorandum of Understanding, entitled “Responsibilities of the Employer”, provides that the employer shall be responsible for the safekeeping of the domestic worker’s passport and surrender such passport to the Indonesian mission in the event of abscondment or death of the domestic worker (paragraph 38). The Memorandum of Understanding also contains many restrictions on the fundamental rights of domestic workers. According to the report, the Memorandum of Understanding may end up encouraging irregular migration because of the long, complicated and expensive documentation process (paragraph 40). In conclusion, the Special Rapporteur indicates that the provisions of the Memorandum of Understanding do not meet international labour standards, especially regarding the right of workers to hold their own passports. The authorization for employers to hold workers’ passports makes it difficult for workers to leave abusive conditions or to negotiate better working conditions and full payment of their wages, and also contributes to the creation of networks of traffickers in persons, forced labour and undocumented migration (paragraph 64).

The Committee notes all this information. It recognizes that the Government has adopted measures intended to improve the protection of migrant workers against exploitation and the imposition of forced labour, both before and after their departure abroad, particularly through the adoption of a Law intended to guarantee their rights and control the activities of recruitment agencies. However, this Law does not appear to provide effective protection for migrant workers

against the risks of exploitation due to its vague provisions and its numerous shortcomings. The information available to the Committee shows that, despite the measures adopted, many Indonesian workers continue to turn to illegal networks, thereby increasing the risk of exploitation. Furthermore, with regard to domestic workers, who account for a large proportion of Indonesian migrant workers, the Committee notes that the Memorandum of Agreement signed with Malaysia, which is later than the adoption of the Law on the placement and protection of Indonesian workers abroad, contains provisions that contribute to maintaining these workers in a situation of great vulnerability, particularly through the authorization of the employer to keep their passports. The Committee is all the more concerned at the situation as the Ministry of Manpower and Transmigration has announced the objective of sending 1 million Indonesian workers abroad per year until 2009 (see page 7 of the study by the ILO Jakarta Office referred to above). ***In this context, the Committee requests the Government to provide detailed and tangible information on the measures that it is continuing to take to improve the protection of Indonesian migrant workers against exploitation and the imposition of forced labour, both in Indonesia and following their departure abroad, particularly with regard to:***

- ***measures to overcome the shortcomings of the legislation that is in force;***
- ***controls over the activities of recruitment agencies and on the fees that they charge migrant workers, in view of the fact that the debt taken on by many of these workers is one of the major causes of their exploitation;***
- ***assistance to migrant workers who are victims of exploitation, including clandestine migrant workers;***
- ***the memoranda of understanding signed with the host countries of Indonesian workers; and***
- ***the penal sanctions imposed in accordance with Article 25 of the Convention on individuals and associations guilty of having imposed forced labour and the legal proceedings that are currently under way.***

### ***Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1999)***

*Article 1(a) of the Convention. Use of forced labour as a punishment for expressing views opposed to the established political, social or economic system.* 1. In its previous comments, the Committee noted that sentences of imprisonment (which involve compulsory prison labour under articles 14 and 19 of the Criminal Code and articles 57(1) and 59(2) of the Prisons Regulations) may be imposed under articles 107(a), 107(d) and 107(e) of the Law concerning the amendment to the Criminal Code in relation to crime against the state's security (No. 27/1999), on any person who disseminates or develops the teachings of Communism/Marxism-Leninism orally, in writing or through any media, or establishes an organization based on such teachings, or establishes relations with such an organization, with a view to replacing Pancasila as the State's foundation.

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. In this respect, it refers to paragraph 154 of its 2007 General Survey on the eradication of forced labour, in which 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 that sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the expression of views or of opposition to the established political, social or economic system, whether such prohibition is imposed by law or by a discretionary administrative decision.

The Committee notes that once again the Government's report does not contain any information in reply to its comments on this point. ***The Committee trusts that the Government will take the necessary measures to bring articles 107(a), 107(d) and 107(e) of Law No. 27/1999 into conformity with the Convention and that it will provide information in its next report on the progress achieved in this respect.***

2. The Committee noted previously that Act No. 9/1998 on freedom of expression in public imposes certain restrictions on the expression of ideas in public during public gatherings, demonstrations, parades, etc., such restrictions being enforceable with criminal sanctions (articles 15, 16 and 17 of the Law). It requested the Government to indicate these sanctions, supplying copies of the relevant texts, and to provide information on the application of the above Law in practice, including copies of court decisions defining or illustrating its scope, so as to enable the Committee to assess its conformity with the Convention. The Committee notes that once again the Government's report does not contain a reply on this point. ***The Committee trusts that the Government will provide the information requested in its next report.***

3. The Committee noted previously the indication in the Government's report that Presidential Decree No. 11 of 1963 on the eradication of subversive activities, which contained provisions punishing the distortion, undermining or deviation from the ideology of Pancasila State or the broad policy lines of the State, was no longer in force. ***Noting that the Government's report does not contain a reply to its previous comments on this matter, the Committee once again requests the Government to indicate in its next report whether this Decree has been formally repealed and, if so, to supply a copy of the repealing text.***

4. In its previous direct requests, the Committee requested the Government to provide a copy of the latest updated and consolidated text of the Criminal Code. It notes the Government's indication that the new Criminal Code is still in the process of finalization. The Committee further notes the information contained on the Internet site of the Constitutional Court (<http://www.mahkamahkonstitusi.go.id>), concerning certain sections of the Criminal Code. According to this information, the Constitutional Court, in its ruling on Case No. 6/PUU-V/2007, found articles 154 and 155 of the Criminal

Code to be contrary to the Constitution of 1945. These articles establish the penalty of imprisonment (involving compulsory labour) for up to seven years and four and a half years, respectively, for a person who publicly gives expression to feelings of hostility, hatred or contempt against the Government (article 154) or who disseminates, openly demonstrates or puts up a writing containing such feelings, with the intent to give publicity to the contents or to enhance the publicity thereof (article 155). In its ruling, the Constitutional Court found that the qualification of a punishable offence formulated in articles 154 and 155 of the Criminal Code requires the fulfilment of the element of a prohibited act, without being linked to the consequence of such acts. Consequently, the formulation of the two articles may lead to abuse of power since they can be easily interpreted according to what the ruler wishes. According to the Constitutional Court, a citizen intending to criticize or to express opinions concerning the Government, which constitutes a constitutional right guaranteed by the 1945 Constitution, may easily be qualified by the ruler as expressing feelings of hostility, hatred or contempt against the Government due to the uncertainty of the criteria in the formulation of articles 154 and 155. Such uncertainty makes it difficult to distinguish a criticism or expression of opinions from such feelings of hostility, hatred or contempt against the Government, since a prosecutor does not need to prove whether or not a statement or opinion expressed by a person has actually caused or provoked hatred or hostility among the public. The Committee further notes that, in ruling No. 013-022/PUU-IV/2006, the Constitutional Court found that it was inappropriate for Indonesia as a republic based on the sovereignty of the people and which upholds the human rights as set forth in the 1945 Constitution, to maintain articles 134, 136bis and 137 of the Criminal Code (respecting deliberate insults against the President or the Vice-President), since they negate the principle of equality before the law, diminish freedom of expression and opinion, freedom of information and the principle of legal certainty. Accordingly, in the view of the Constitutional Court, the new draft text of the Criminal Code must also exclude provisions that are identical or similar to those of articles 134, 136bis and 137 of the Criminal Code.

Furthermore, the Committee has noted the cases of several persons convicted recently to heavy sentences of imprisonment, involving compulsory labour, for the peaceful expression of their political opinions, their peaceful support to an independence movement, or for the simple fact of having raised a separatist flag in the eastern provinces of Papua and West Irian Jaya, under the above provisions of the Criminal Code and article 106, under which a maximum sentence of imprisonment of 20 years may be imposed for an attempt to separate part of the territory of the State.

***In view of the above and of the incidence that these provisions of the Criminal Code may have on the application of the Convention, the Committee expresses its deep concern and hopes that the Government will take into account the rulings of the Constitutional Court in the context of the adoption of the new Criminal Code. It requests the Government to provide a copy of the Code as soon as it has been adopted. In the meantime, it requests the Government to indicate the manner in which articles 106, 134, 136bis, 137, 154 and 155 of the Penal Code are applied in practice, with copies of any court rulings issued thereunder.***

***Article 1(d). Recourse to compulsory labour as a punishment for having participated in strikes.*** In its 2005 direct request, the Committee noted that under article 139 of the Manpower Act (No. 13 of 2003), read in conjunction with article 185 of the same Act, restrictions on the right to strike in enterprises that serve the public interest are enforceable with sanctions of imprisonment for a term of up to four years (which involves compulsory prison labour). With reference to paragraph 185 of its 2007 General Survey on the eradication of forced labour, the Committee recalls that, to be compatible with the Convention, penalties involving compulsory labour for participation in strikes may only be applied in respect of essential services in the strict sense of the term (that is, only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee observed previously that certain kinds of services listed in the explanatory notes to article 139 of the Manpower Act (such as the railway service) do not meet these criteria. The Committee also refers to the observation that it is making under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), particularly on the need to remove certain restrictions on the right to strike and to amend provisions establishing disproportionate penal sanctions. The Committee notes the Government's statement in its last report that there is no plan to amend these provisions. ***The Committee trusts that the Government will take the appropriate measures to amend these provisions of the Manpower Act so as to limit their scope to essential services in the strict sense of the term and to ensure that no penalty involving compulsory labour can be imposed on persons participating in strikes. While awaiting this amendment, the Committee once again requests the Government to provide information on the effect given in practice to articles 139 and 185, including copies of court decisions defining or illustrating their scope.***

The Committee is also addressing a request directly to the Government on other matters.

[The Government is asked to supply full particulars to the Conference at its 97th Session.]

## **Jamaica**

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1962)***

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

***Article 1(1) and Article 2(1) and (2)(c), of the Convention. Prison labour performed for private entities.*** In its earlier comments, the Committee referred to section 155(2) of the Correctional Institution (Adult Correction Centre) Rules of 1991,

under which no inmate may be employed in the service of, or for the private benefit of, any person, except with the authority of the Commissioner or in pursuance of special rules. The Government indicated in its 2001 report that, under section 60(b) of the Corrections Act, as amended by the Corrections (Amendment) Act, 1995, the Minister may establish programmes under which persons serving a sentence in a correctional institution may be directed by the Superintendent to undertake work in any company or organization approved by the Commissioner, subject to such provisions as may be prescribed relating to their employment, discipline and control, and such work may be within the centre or institution or outside its limits. The Committee noted the information concerning the functioning of the Correctional Services Production Company (COSPROD), supplied by the Government in 2001 and 2002, as well as the Government's repeated statement that, under this programme, some inmates had been working under the conditions of a freely accepted employment relationship, with their formal consent and subject to guarantees regarding the payment of normal wages.

The Committee notes the Government's statement in the report that the Department of Correctional Services under the Ministry of National Security and Justice contemplates no change or deviation in its governing rules or general practices, and that there is no consideration being given to reintroducing forced labour. The Government indicates that inmates who work on farms do so willingly and without coercion.

*The Committee reiterates its hope that on the occasion of a future amendment of the Correctional Institution (Adult Correction Centre) Rules, section 155(2) will be amended so as to ensure that no prisoners may work for private individuals, companies, etc., except where they do so under the conditions of a freely accepted employment relationship, with their formal consent and subject to guarantees regarding the payment of normal wages and social security, etc., in order to bring this provision into conformity with the Convention and the indicated practice. The Committee again requests the Government to provide a copy of any special rules adopted under section 155(2) and to continue to provide information on its application in practice, pending the amendment.*

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers.* In its earlier comments, the Committee referred to the following provisions of the Jamaica Shipping Act, 1998, under which certain disciplinary offences are punishable with imprisonment (involving an obligation to perform labour under the Prisons Law):

- section 178(1)(b), (c) and (e), which provides for penalties of imprisonment, inter alia, for wilful disobedience or neglect of duty or combining with any of the crews to impede the progress of the voyage; an exemption from this liability applies only to seafarers participating in a lawful strike after the ship has arrived and has been secured in good safety to the satisfaction of the master at a port, and only at a port in Jamaica (section 178(2));
- section 179(a) and (b), which punishes with similar penalties the offences of desertion and absence without leave.

The Committee previously noted the Government's indications in its 2004 report that the Maritime Authority had given written instructions to the Attorney General's Department and the Office of the Parliamentary Council to amend the above sections of the Shipping Act, 1998, in order to make its provisions compatible with the Convention. The Government states in its latest report of 2006 that no response has been received from the abovementioned bodies on the Maritime Authority's request.

While having noted the Government's view expressed in the report that, despite the fact that amendment has not yet been made to the above provisions of the Act, Jamaica is still in compliance with the Convention, the Committee points out, referring also to paragraphs 179 to 181 of its 2007 General Survey on the eradication of forced labour, that provisions under which penalties of imprisonment (involving an obligation to perform labour) may be imposed for desertion, absence without leave or disobedience are incompatible with the Convention. Only sanctions relating to acts that are likely to endanger the safety of the ship or the life or health of persons (e.g. as provided for in section 177 of the 1998 Shipping Act) have no bearing on the Convention.

*The Committee expresses firm hope that the necessary measures will at last be taken to bring the legislation into conformity with the Convention, e.g. by limiting the scope of the relevant provisions of the Shipping Act, 1998, as indicated above, and that the Government will soon be in a position to report the progress made in this regard.*

## **Japan**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1932)**

1. In its previous comments, the Committee has discussed at length the limits of its mandate in respect of the two historical breaches by the Government of the Convention relating to the Second World War and the years leading up to it namely, military sexual slavery (the system of so-called "comfort women") and wartime industrial forced labour. It will not repeat them here.

2. The Committee, in its last two observations, has requested the Government to continue to inform it about the course and outcomes of litigation in relation to claims of the victims and also to provide information about any related action. Next year is the reporting year for the Government under this Convention.

3. This year, following its previous observation, the Committee has received further information from numerous workers' organizations, including communications from:

- the All Japan Shipbuilding and Engineering Union received on 28 May, 27 and 28 August 2007, copies of which were forwarded to the Government on 5 June and 5 September 2007;
- the Japan Dockworkers Union (Nagoya Branch), received on 24 July 2007, of which a copy was forwarded on 21 August 2007;
- the All Toyota Labour Union (ATU), received on 10 August 2007, with a copy forwarded on 17 August 2007;
- the Heavy Industry Labour Union (Japan), received on 27 August 2007, with a copy forwarded to the Government on 5 September 2007;
- the Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) received on 30 August 2007, with a copy forwarded to the Government on 11 September 2007;
- the Federatie Nederlandse Vakbeweging (FNV) received on 30 August 2007 with a copy forwarded on 13 September 2007. A second communication was received on 28 November 2007; and
- the International Trade Union Confederation (ITUC), received on 13 September 2007, of which a copy was forwarded to the Government on 21 September 2007.

4. The Committee notes that the communications essentially referred to a number of recent judgements by Japanese courts in cases involving individual claims by victims of wartime industrial forced labour and military sexual slavery, in which the courts have dismissed the claims, finding that the legal basis of the claims has been extinguished by post-war treaties (or barred by statutes of limitation). At the same time, factual findings have been made in favour of the victim plaintiffs and encouraging the party defendants to settle the claims on moral or humanitarian grounds. Some cases may be the subject of future appeal on legal grounds.

5. In addition, the communications of the workers' organizations referred to above include reference to public remarks in October 2006 and March 2007 by then Prime Minister Shinzo Abe and other Cabinet officials. The communications assert that the remarks amount to assertions denying proof of the use of direct, physical coercion by the Japanese military to recruit women and girls into conditions of wartime sexual slavery, which statements appeared to repudiate the August 1993 statement of the then Chief Cabinet Secretary, Mr Yohei Kono, reporting on the findings of a government inquiry, and noted by this Committee in its 2002 observation.

6. The Committee notes the communication submitted by the Government dated 30 November 2007, informing it that, given the volume of communications it has received, it will provide a comprehensive report in 2008, which is its regular reporting year for this Convention. The Government however provided a copy in Japanese of the Supreme Court judgement on the Nishimatsu Corporation case on 27 April 2007. It also stated as regards the issue of "comfort women" that the position of the Government expressed in the statement of the then Chief Cabinet Secretary, Mr Yohei Kono, on the result of the study on the issue of "comfort women" in 1993 remained unchanged and that the then Prime Minister Abe has expressed his support for this statement.

**7. *The Committee requests the Government to fully respond to the recent judicial and related developments referred to in the communications from the workers' organizations referred to above as well as to the observation contained in its last report.***

## Lebanon

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1977)***

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant domestic workers with regard to the illegal exaction of forced labour.* In its earlier comments, the Committee referred to the observations on the application of the Convention by Lebanon received in 2001 from the World Confederation of Labour (WCL), which contained information concerning cases of the illegal abuse of migrant workers, particularly domestic workers, including non-payment of salaries, corporal punishment, sexual abuse and enforced sequestration. The WCL alleged that, from the early 1990s, there had been a particularly large influx of African and Asian women into Lebanon, serving primarily as domestic labour in private households, and that both the employment relations and social status of these women left them extremely vulnerable to exploitation and abuse, most of them falling under the category of "contract slavery"; the existence of abuse and violence, denial of basic freedom of movement and exploitative working conditions contributed to this definition.

The Committee has noted from the Government's indications in its reports that the authorities are endeavouring to stop or prohibit the illegal exaction of forced labour which may be encountered by migrant workers who enter Lebanon in an illegal manner. According to the reports received in 2005 and 2007, the Lebanese Ministry of Labour has adopted measures for the protection of migrant workers including women working as domestic workers, particularly as regards payment of wages and other conditions of work. The Committee has noted the adoption of Order No. 70/1 of 9 July 2003 on the organization of work of agencies which bring in foreign female domestic workers, which provides for the obligations of employers with regard to working and living conditions of domestic workers, payment of their wages, and contains provisions concerning submission of complaints, supervision and labour inspection. It has also noted Order No. 40 of 10 April 2007 concerning the establishment of a National Steering Committee on the situation of female migrant domestic workers in Lebanon, in accordance with the recommendations of a workshop on this subject held in

2005 in Beirut. By virtue of section 2 of Order No. 40, the National Steering Committee shall prepare and carry out projects aiming at promoting and protecting female migrant domestic workers' rights, in coordination with the relevant departments, the International Labour Organization, other competent Arab and international organizations, as well as non-governmental committees and other relevant bodies. The Committee has noted the ratification by Lebanon, in 2005, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

*While noting this information with interest, the Committee hopes that the Government will provide, in its next report, information on the activities of the National Steering Committee and on the measures taken, both in legislation and in practice, to protect migrant domestic workers with a view to complete elimination of the exaction of forced labour from this category of workers. Please describe, in particular, the measures taken or envisaged in pursuance of recommendations of the workshop referred to above, concerning, inter alia, the elaboration of a standardized employment contract for domestic workers to be used by all employment agencies in the country, the establishment of a help desk for domestic workers at the Ministry of Labour for investigation of complaints and mediation between the employer, employment agency and worker, the inclusion of the protective measures for migrant domestic workers into the National Plan of Action on human rights.*

The Committee is also addressing a request on certain other points directly to the Government.

## Liberia

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation on the following matters:

1. *Article 1(a) of the Convention. Imposition of prison sentences involving the obligation to work as punishment for expressing political views.* In its earlier comments the Committee observed that prison sentences (involving, under Chapter 34, section 34-14, paragraph 1, of the Liberian Code of Laws, an obligation to work) 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) and section 216 of the Election Law (punishing participation in activities that seek to continue or revive certain political parties). The Committee also requested the Government to provide a copy of Decree No. 88A of 1985 relating to criticism of the Government.

The Committee has noted the Government's indication in its report that section 216 of the Election Law and Decree No. 88A of 1985 have been repealed. *Since the copies of repealing Acts referred to by the Government as annexed to its report have not been received at the ILO, the Committee hopes that copies will soon be forwarded. The Committee also requests the Government to state 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.*

The Committee previously noted that under a Decree adopted by the People's Redemption Council before its dissolution in July 1984, parties can be forbidden if they are considered to have engaged in activities or expressed objectives which go against the republican form of government or basic Liberian values. *The Committee again requests the Government to indicate whether the provisions of this Decree are still in force and, if so, to provide a copy of the text of the Decree.*

2. *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 must point 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 hopes that section 347(1) and (2) of the Maritime Law will soon be repealed and that the Government will supply 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 refers 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 therefore again expresses the hope that measures will 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.*

In its earlier comments the Committee referred to Decree No. 12 of 30 June 1980 prohibiting strikes. It notes with interest the Government's statement in its report that a draft law repealing the abovementioned Decree is now before the competent authority for passing into law. *The Committee requests the Government to provide a copy of the repealing law 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.*

## 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.

In its earlier comments, the Committee noted that Act No. 20 of 1991 on the promotion of freedom proclaims the right of citizens to express their opinion and that point 2 of the Green Book on Human Rights prohibits punishments such as forced labour or long-term imprisonment. It also noted the Government's indications to the effect that the abovementioned provisions of the Publications Act No. 76 of 1972 and of the Penal Code would be amended, and that under section 2 of Act No. 5 of 1991 on the application of the principles of the Green Book on Human Rights, amendments must be drawn up within a period of one year.

*While noting the Government's repeated confirmation of its intention to amend the provisions of Publications Act No. 76 of 1972 and the Penal Code referred to above, in accordance with the Convention and the provisions of Act No. 20 of 1991 on the promotion of freedom, the Committee expresses the firm hope that the necessary amendments will be made in the near future 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 disciplines or participated in strikes. It asks the Government to supply the 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.*

## Madagascar

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Article 2(2)(c) of the Convention. Prison labour. Hiring of prison labour to private enterprises.* The Committee notes that Decree No. 2006-015 of 17 January 2006 on the general organization of prison administration has repealed Decree No. 59-121 of 27 October 1959, which allowed prison labour to be hired out to private enterprises and persons detained pending trial to be required to perform work.

With regard to the latter provision, the Committee notes with satisfaction that with the repeal of Decree No. 59-121 and the provisions introduced by Decree No. 2006-015, persons detained pending trial are no longer subjected to compulsory labour. In its previous observation, the Committee noted that under section 4(4) of the new Labour Code (Act No. 2003-044), it was prohibited to require persons detained pending trial to work. It notes that, according to section 109(2) of Decree No. 2006-015, for such persons to be employed, prior authorization must be obtained from the magistrate in charge and that such authorization is granted only for persons who have been in pre-trial detention for more than two months.

The Committee notes the provisions of Chapter XIX of Decree No. 2006-015, "Work by Prisoners" (sections 104–115). It notes that under these provisions, as under those of Decree No. 59-121 prior to its repeal, prison labour may be hired out to private enterprises. According to section 109(1) of Decree No. 2006-015, prison labour is carried out under general service or hiring arrangements. Under section 112(1), in the case of prison labour under a hiring arrangement, the prisoner may either be placed at the disposal of public or semi-public services or establishments or hired out to private enterprises. The Committee recalls that according to *Article 2(2)(c)*, of the Convention, prison labour is excluded from the Convention's scope only on condition that the work or service is carried out under the supervision and control of a public authority and the convicted person is not hired to or placed at the disposal of private individuals, companies or associations. In its 2007 General Survey on the eradication of forced labour, the Committee has taken the view that, as long as the necessary safeguards exist to ensure that the persons concerned offer themselves *voluntarily* and without being subjected to pressure or the menace of any penalty, such employment does not fall within the scope of the Convention (paragraph 59). The Committee also indicated that the most reliable indication of authenticating voluntariness and free consent is where the work is performed under conditions which approximate a free labour relationship (paragraphs 115–120). The Committee notes with interest in this connection that some provisions of Chapter XIX of Decree No. 2006-015 are an improvement in comparison with previous legislation. It notes that under section 105, persons in custody, regardless of their penal status, *may ask to be offered* work. According to section 106, work *provided* to prisoners takes into account the requirements for the proper running of establishments in general and penal camps in particular. Section 107(1) provides that daily and weekly working hours, which are set by internal rules of the establishment, must

approximate working hours in the corresponding region or type of occupation and must on no account exceed the working hours practised. Section 107(2) provides that observance of weekly rest periods and holidays must be ensured and that the necessary provision must be made in work schedules for rest periods and for meals. According to section 108, independent of prisoner surveillance, staff must ensure observance of the rules on discipline and security in the workplace. Under section 110, work in the service, or for the personal convenience, of individuals, whether magistrates, public servants or private persons, is prohibited. Section 112(3) provides that for prison work carried out under a hiring arrangement, remuneration and working conditions must approximate those provided in the Labour Code. Lastly, under section 114, prisoners employed outside prison establishments under a hiring arrangement or in penal camps remain under the control of the prison staff.

*In view of the foregoing, the Committee requests the Government to indicate whether, in practice, persons convicted in a court of law are hired to private enterprises and to indicate what measures are taken to ensure that the consent of the persons concerned is free and informed. Please indicate in particular what consequences would result from refusing to work for a private enterprise, for example, with regard to the possibilities for conditional release in the event of such refusal, and specify the level of remuneration actually received by prisoners as compared to free workers in the same occupational category, the daily, weekly and monthly working hours actually in force, as well as measures taken concerning the occupational safety and health of prisoners.*

*Article 2(2)(a). National service.* In its previous observations the Committee took note of the indications of the Government that it was contemplating the amendment of Ordinance No. 78-002 of 16 February 1978 setting forth general principles of national service, which define national service as the compulsory participation of young Malagasies in national defence and in the economic and social development of the country. The Committee noted that, according to the Government's report, changes were to be made and would be communicated in due course. Having received no fresh information on this matter, the Committee must point out once again that to force young people to participate in development work as part of compulsory military service, or as an alternative thereto, is incompatible with the Convention. *It again expresses the hope that the Government will take the necessary steps to bring the legislation into line with the Convention, in particular by ensuring that participation by young persons in national service is voluntary and that work required under military service laws is of a purely military character.*

## Mauritania

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1961)**

*Articles 1(1) and 2(1) of the Convention. Slavery and slave-like practices.* The Committee notes the Government's report and the comments provided by the General Confederation of Workers of Mauritania (CGTM).

For many years, both the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference have been examining attentively the issue of slavery and the vestiges of slavery in Mauritania, and particularly the practices of forced labour which may be imposed in this context. In its last comments, the Committee noted that, at the request of the Conference Committee on the Application of Standards, the Government accepted the visit of a fact-finding mission in May 2006. The Committee observed with interest that the mission had noted a number of positive measures which illustrated the Government's commitment to combat slavery and its vestiges, which was no longer considered to be a taboo subject. It also noted the Government's indication that the recommendations contained in the mission's report should be taken into account in the national strategy to combat the vestiges of slavery. On the basis of these recommendations and the information provided by the Government, the Committee requested the Government to take additional measures to reinforce its legislation, the effective application of the legislation and the national strategy to combat the vestiges of slavery.

(a) *Applicable legislation.* In its previous comments, the Committee emphasized the shortcomings in the legislation. It hoped that, as the fact-finding mission had recommended, the Government would take the necessary measures to adopt a text clearly penalizing slave-like practices and defining in precise terms their constituent elements so as to enable the judiciary to apply it easily. The Committee notes the adoption by the National Assembly on 9 August 2007 of the Act criminalizing and penalizing slave-like practices. In his explanation of the reasons for the Act, the Prime Minister indicated that the legislative provisions adopted up to then had not achieved their objective, as the texts adopted had not contained an "explicit classification of the phenomenon and its criminalization and penalization to an extent that takes into account its inhumanity". The Committee notes with satisfaction that this Act defines, criminalizes and penalizes slave-like practices. Section 2 of the Act defines slavery as the exercise of one or all of the attributes of the right of ownership over one or more persons. The Act makes a distinction between the crime of slavery and offences of slavery. A crime of slavery, which is punishable with a sentence of imprisonment of between five and ten years and a fine of between 500,000 and 1 million ouguiyas, consists of reducing another person to slavery, or inciting said person to relinquish her or his freedom or dignity or that of a dependent person or a person under her or his guardianship to be reduced to slavery (section 4). Sections 5–13 define and penalize the various offences of slavery. The Committee notes in particular that these 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 shall be punished by a sentence of imprisonment of from six months to two years and fine of from 50,000 to 200,000 ouguiyas". 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. The Committee further notes with interest that the Walis, Hakems, local chiefs and officers of the criminal investigation police who do not follow up denunciations of slave-like practices that come 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 court proceedings (section 15).

(b) *Effective application of the legislation.* In its previous comments, the Committee noted that the national jurisdictions had never previously examined allegations relating to practices of forced labour or slavery and that victims encountered difficulties in being heard and in asserting their rights, both at the level of the public authorities and the judicial authorities. It noted, on the one hand, the instructions issued by the Minister of the Interior to Walis, Hakems and local chiefs to enforce the law, deal with cases which come to their knowledge with the required rigour and bring cases that lie within their competence to justice; and, on the other hand, the instructions given by the Minister of Justice to the prosecution services to make on-the-spot investigations when an allegation relating to the vestiges of slavery is brought to their knowledge and to investigate it.

The Committee considers that the Act criminalizing and penalizing slave-like practices, as it defines precisely the elements which constitute the crime and the offences of slavery, will be easier for the investigatory and judicial authorities to apply. The Committee considers that it is indispensable for this Act to be the subject of broad publicity among these authorities, as well as the population in general. It is essential that both the victims and those responsible for these practices realize that the climate has changed. The Committee notes in this respect that the Government refers in its report to the “mobilization of all official and private media with a view to demystifying this problem and raising the awareness of populations as to the gravity of slave-like practices and the obstacle that it constitutes to national cohesion and the socio-economic development of the country”.

***The Committee requests the Government to take steps to publicize the new provisions of the legislation so as to promote an understanding of the criminal nature and consequences of engaging in slavery and its vestiges. Such awareness is required to be disseminated to public authorities as well as the public in general. The Committee asks that the Government inform in its next report of the actions taken.***

The Committee recalls that, under *Article 25* of the Convention, States which ratify the Convention are under the obligation to ensure that the penalties imposed by the law for the exaction of forced labour are really adequate and are strictly enforced. ***The Committee requests the Government to take the necessary measures to ensure that, on the one hand, victims receive appropriate protection in order to encourage them to approach the police and judicial authorities to assert their rights and, on the other, that investigations are conducted in a rapid, effective and impartial manner; the provisions of the Act addressing assistance to victims and those allowing the prosecution of authorities which do not follow up on denunciations of slave-like practices that are brought to their knowledge will undoubtedly contribute to the achievement of this objective. The Committee also requests the Government to provide information on any court decision handed down under the Act criminalizing slavery and slave-like practices. Whilst the Government has taken an important first step in combating slavery by the adoption of legislation, the challenge is now to implement the legislation by ensuring that those responsible for the continuation of slavery are appropriately convicted and that dissuasive penalties are applied.***

(c) *National strategy to combat the vestiges of slavery.* The Committee noted previously that the Council of Ministers adopted in July 2006 the principle of the formulation, in the context of a participatory approach, of a national strategy to combat the vestiges of slavery, and that an inter-ministerial committee was established for this purpose in October 2006. It requested the Government to provide detailed information on the adoption and implementation of this strategy. In its last report, the Government does not specify whether the strategy has in practice been adopted. The Committee however notes the Government’s indication that it will endeavour to find the means and machinery to address the vestiges of slavery through a national plan determining objectives in accordance with the priorities defined and encompassing the state sectors concerned (education, justice, communication, agriculture, water, youth and sports). The plan will be evaluated regularly until such time as those suffering the vestiges of the phenomenon catch up with the general level of construction, equality and justice. The Government refers to the implementation of a voluntarist national policy involving all Mauritians and rejecting exclusion by giving priority to the most underprivileged and vulnerable citizens, with a view to their integration into active life. The Government refers in this respect to the need to promote and support the emergence of income-generating activities for persons who are vulnerable and have been the victims of the vestiges of slavery, and to facilitate the access of the poorest and most vulnerable to vocational training so as to improve their employability. It also refers to the promotion in poor rural agglomerations of basic infrastructure construction (dams, schools, wells) so as to address their essential problems more effectively.

The Committee notes this information. ***It would be grateful if the Government would indicate whether a national strategy to combat the vestiges of slavery or a national plan of action have been adopted in practice and, if so, to provide a copy, and asks it to indicate the activities undertaken by the inter-ministerial committee established for this purpose. The Committee also requests the Government to provide more detailed information on the tangible measures that have been adopted and that it intends to take in the context of the strategy or national plan that is adopted. In this respect, it is important for all the actors called upon to play a role in combating slavery and its vestiges, including the police and the forces of order, the judiciary, the labour inspectorate and civil society, including the National Human***

*Rights Commission and the religious authorities, to be stakeholders in this strategy, and for the need to be taken into account to undertake awareness-raising activities at the national, regional and local levels targeting all of the stakeholders referred to above. The Committee would be grateful if the Government would indicate the manner in which programmes to combat poverty specifically target communities in which the phenomenon of slavery and its vestiges is known and persists with a view to preventing these vulnerable persons from once again becoming victims of these practices.*

Finally, in the same way as the fact-finding mission, the Committee emphasized previously that it is important to have available reliable information as a basis for assessing the scope of the phenomenon of slavery and its characteristics. It hoped that the Government would be able to conduct a study to offer better guidance for the action that has to be taken by the public authorities and to target the populations and geographical areas concerned. The Committee notes that the UNDP and the European Commission have agreed to mobilize financing to undertake this study and have proposed terms of reference to the Government, in consultation with the Office, which is making its technical assistance available to the Government. *The Committee requests the Government to provide information on any development in this respect.*

## Republic of Moldova

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1993)**

*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 also addressing a request on certain other points directly to the Government.

## Myanmar

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1955)**

#### *Historical background*

1. In previous comments the Committee has drawn attention to gross breaches of the Convention by the Government of Myanmar and the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997.

2. The Commission of Inquiry, appointed in 1997 under article 26 of the Constitution, concluded that the Convention was violated in national law and in practice in a widespread and systematic manner, and made the following recommendations:

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, in particular by the military.

3. The continued failure of the Government to comply with those recommendations and the observations of the Committee of Experts as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session. The detailed history of this extremely serious case has been set out at length in previous observations of this Committee in recent years.

4. Each of the ILO bodies, in discussing this case, had focused attention on the recommendations of the Commission of Inquiry. The Committee of Experts has in its previous observations identified four areas in which measures should be taken by the Government to achieve those recommendations. Specifically, the Committee indicated the following measures:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

#### *Developments since the Committee's last observation*

5. There has been a number of discussions and conclusions by ILO bodies and also further documentation received which the Committee has considered in the course of making this observation. In particular the Committee notes:

- the discussions and conclusions of the Conference Committee on the Application of Standards during the 96th Session of the International Labour Conference in June 2007;
- the documents submitted to the Governing Body at its 298th and 300th Sessions (March and November 2007) as well as the discussions and conclusions of the Governing Body during the sessions;
- the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2007 together with the detailed appendices of some 740 pages;
- the reports of the Government of Myanmar received on 17 and 20 August, 10 September and 12 and 23 October as well as 3 December 2007; and
- the Supplementary Understanding (SU) of 26 February 2007 to the earlier Understanding of 19 March 2003 concerning the appointment of an ILO Liaison Officer in Myanmar.

#### *The Supplementary Understanding of 26 February 2007*

6. The Committee notes at this point that the SU is a very important development and its significance is discussed in greater detail towards the end of this observation. It is important for the SU to be viewed in the context of the other documentation, discussions and conclusions referred to above.

7. The SU concerns the appointment and role of an ILO Liaison Officer in Myanmar, and was concluded after long negotiations between the ILO and the Government of Myanmar. The SU provides for a new complaints mechanism to be established and put into operation, and has as its prime object "to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation". The mechanism was to be implemented on a trial basis over a period of 12 months and could thereafter be extended by mutual agreement (GB.298/5/1, appendix).

8. The role of the Liaison Officer in the context of the SU and the impact of his work in the circumstances in which he was required to perform it in the country, was a major subject of later discussion in ILO bodies.

#### *Discussion and conclusions of the Conference Committee on the Application of Standards*

9. The conclusion of the Conference Committee during the 96th Session in June 2007, was that, whilst the complaints mechanism set up under the SU was continuing to function, it had to be assessed against the ultimate goal of eliminating forced labour.

10. In this connection, the Committee notes that the Committee on the Application of Standards in its conclusions in June 2007 (ILC, 96th Session, *Provisional Record* No. 22, Part 3) "observed that the mechanism had to be assessed against the ultimate goal of eliminating forced labour, and it remained to be seen what the impact would be"; and that the recent documentation submitted to the Governing Body stated that "it is both physically and financially very difficult for victims of forced labour or their relatives to lodge a complaint if they live outside Yangon" noting that "informal networks have been developed" which "although valuable ... do not necessarily extend to all parts of the country" (GB.300/8, paragraph 9). The Committee also notes from the documentation that "regarding the mechanism set up by the Supplementary Understanding, it is not possible today to say to what extent it is fully functional after the civil unrest and its suppression, and thus to what extent experiences from it can be built upon" (GB.300/8, Add, paragraph 9).

#### *Discussions in the Governing Body*

11. The Committee notes that the reports to the Governing Body at its 300th Session in November 2007 regarding the progress of the complaints mechanism indicated that as of 7 November 2007, the Liaison Officer had received 56 complaints (GB.300/8 (Add.), paragraph 3). Of those complaints, 19 were assessed as falling outside the mandate of the Liaison Officer and 24 were formally submitted for investigation and appropriate action to the Deputy Minister of Labour in his capacity as Chairman of the Government Working Group on Forced Labour. Four complaints were closed after being assessed as having an insufficient basis to proceed, and nine complaints were still being processed or could not

proceed until further information was received from the complainants (GB. 300/8, paragraph 5 and GB.300/8 (Add.), paragraph 5).

12. In addition, the Governing Body called upon the Government to ensure that the mechanism provided by the SU remained fully functional with no further detention or harassment of complainants, facilitators or others, and that it should be fully applied to the military authorities. It considered that full attention should also be given to preventing the recruitment of child soldiers (paragraph 5). Importantly, the Governing Body also called for the putting into place of an appropriate network towards ensuring that the nationwide application of the SU, including in the combat zones, and to ensure that forced labour victims are able to easily access the complaints mechanism (paragraph 6).

### ***Communication received from the International Trade Union Confederation***

13. The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2007. Appended to this communication were 45 documents, amounting to more than 740 pages, containing extensive and detailed documentation referring to forced labour practices on the part of civil and military authorities. In many cases, the documentation refers to specific dates, detailed locations and circumstances, and specific civil bodies, military units and individual officials. The documentation covers a broad area of the country (including many parts of Chin, Kayah, Kayin, southern Mon, northern Rakhine and Shan States, and of Ayeyarwady, Bago, Mandalay and Tanintharyi Divisions) during the period from the second half of 2006 through the first half of 2007. The incidents referred to involve the alleged requisition of labour for the full range of tasks identified by the Commission of Inquiry:

- portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
- construction or repair of military camps/facilities;
- other support for camps (guides, messengers, cooks, cleaners, etc.);
- income-generation by individuals or groups (including work in army-owned agricultural and industrial projects);
- various infrastructure projects; and
- cleaning/beautification of rural or urban areas.

14. The documentation includes copies of 145 written orders apparently from military and other authorities to villages in Kayin State, containing a range of demands entailing in most cases a requirement for (uncompensated) labour. It also includes photographs purporting to show people in Mon State being forced to work on military development projects, as detailed in an accompanying report. It further includes a video in which five men state that they were forced to work for the Myanmar army since April 2007 as porters, sentries, carrying out construction projects, building fences and doing various tasks in army camps, as well as being forced to provide ox carts and tractors to the army. A copy of the ITUC's communication and its annexes was transmitted to the Government for such comments as it may wish to provide.

### ***The Government reports***

15. The Committee notes the Government's reports received on 17 and 20 August, 10 September, 12 and 23 October, and 3 December 2007. These reports make reference to information contained in a communication from the ITUC to the Committee dated 31 August 2006 that was forwarded to the Government and to which reference was made in the Committee's previous observation. The Government has not responded in detail to the information contained in the ITUC's communication, except to state its view that "most of the issues raised by the [ITUC] are totally groundless" and to note that such cases "would be covered by the mechanism to deal with the forced labour complaints under the Supplementary Understanding" agreed between the ILO and Myanmar on 26 February 2007.

16. The Committee must point out that agreement on the Supplementary Understanding and the establishment of the complaint mechanism provided for thereunder, in no way relieves the Government of its obligation under the Convention to suppress the use of forced labour. Rather, they are a means to assist the Government in meeting this obligation through the full implementation of the recommendations of the Commission of Inquiry.

17. ***The Committee requests the Government to respond in detail in its next report to the numerous specific allegations contained in the most recent communication from the ITUC as well as that of the previous year.***

### ***Assessment of the situation***

#### ***Issuing specific and concrete instructions to the civilian and military authorities***

18. The Committee notes that in its report the Government has again referred to a series of letters, directives, telegrams and rules issued by various civil and military authorities relating to the Orders prohibiting forced labour. However, as noted in its previous observation, since the Government has supplied minimal details of the content of these instructions, and given that all the indications suggest that the imposition of forced labour continues to be widespread, the Committee is yet to be convinced that clear instructions have been effectively conveyed to all civil authorities and military units. ***The Committee reinforces the need for appropriate publicity to be given to these Orders.***

19. The Committee must also emphasize that, even if the Orders provide a statutory basis in practice for ensuring compliance with the Convention, this still falls far short of the formal repeal of the provisions of the relevant legislation requested by the Commission of Inquiry. ***The Committee therefore hopes that the Government will take the necessary***

*steps to amend these provisions as soon as possible, something it has been promising to do for 40 years. The Committee also hopes that the Government will take advantage of the opportunity to bring constitutional clarity to the prohibition of forced labour.*

#### ***Ensuring that the prohibition of forced labour is given wide publicity***

20. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee refers to its comment above. The Committee also notes the agreement on 26 February 2007 of a Supplementary Understanding between the ILO and the Government, which is a welcome development. The mechanism that it establishes to deal with complaints of forced labour provides an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and will be punished as a penal offence, as required by the Convention. The fact that Order No. 1/99 as supplemented by the Order of 27 October 2000, has been used as a legal basis for criminal convictions of government officials for exacting forced labour, is in line with the Committee's conclusion in its observation published in 2001, that these Orders "could provide a statutory basis for ensuring compliance with the Convention in practice, if given bona fide effect not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officers entitled to call on the assistance of local authorities under the Acts".

21. The Committee also notes that some publicity has been given to the signing of the Supplementary Understanding and to the subsequent prosecutions of two officials for imposing forced labour (a press release on 26 February 2007; a press conference by the Director-General of the Department of Labour on 26 March 2007; and an article on the prosecutions in the *New Light of Myanmar* on 31 March 2007). The Committee also notes from the report submitted to the 300th Session of the Governing Body that the Government "has undertaken widespread training for administrators to raise awareness of the law and to explain the Supplementary Understanding procedure", that "a further round of such training on a joint ILO/Ministry of Labour basis has been discussed" and that "the Government has drafted a booklet entitled *Eradication of forced labour – Educational Paper No. 1*", consultations on the content and format of which are continuing prior to its dissemination throughout the administration (GB.300/8, paragraph 8).

22. The Committee considers that such publicity is vital in ensuring that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded. The Committee shares the view of the Governing Body that "an unambiguous public statement that all forms of forced labour are prohibited throughout the country and will be duly punished" from the Government of Myanmar "at the highest level" (GB.300/8, conclusions) would be extremely valuable.

#### ***Providing for the budgeting of adequate means for the replacement of forced or unpaid labour***

23. In this regard, the Committee stresses the importance of its request, made regularly in previous observations and underlined in the recent conclusions of the Conference Committee on the Application of Standards, that specific instructions be issued to all military units making clear the prohibition of forced labour and the fact that this will be strictly enforced. This requires the budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, are necessary if recourse to the practice is to end.

24. Similarly, the Committee notes that the Government's report of 17 August 2007 states that it provides a budget allotment including labour costs "for all Ministries to implement their respective projects" and that a signed statement from the Ministry of Construction indicating the sum in question is provided in an annex to the report. Again, the Committee fails to understand, if adequate resources really are provided to civil and military authorities, why it is that recourse to unpaid forced labour apparently remains widespread, particularly by the military and by local civil administrations. ***The Committee repeats its earlier request that the Government, in its next report, provide detailed information about the measures taken to budget for adequate means for the replacement of forced or unpaid labour.***

#### ***Ensuring the enforcement of the prohibition of forced labour***

25. The Committee is bound to express its concern that, as stated in the reports submitted by the Office to the Governing Body referred to above, and in the information provided by the Government, that out of 24 complaints (as of 7 November) forwarded by the Liaison Officer to the authorities for investigation and appropriate action, only one case has so far resulted in the prosecution of those responsible (Case No. 001, which led to the prosecution of two civilian officials). A number of other cases have led to administrative action against civilian officials (for example, dismissals or warnings for the officials concerned). Although seven of the cases forwarded to the authorities by the Liaison Officer involved allegations against military personnel (for forced recruitment of children into the army, and imposition of forced labour against villagers), there are so far no indications that any action, criminal or even administrative, has been taken against any military personnel. The Committee notes the recent information provided by the Government on 3 December 2007 that it has taken concrete measures to prevent recruitment of children into the military by setting up a central committee and working committees, with follow-up workshops.

26. The Committee notes the information from the Liaison Officer that the Government Working Group "appears to be more successful in achieving prompt and constructive outcomes in cases associated with civil administrations. It is more difficult to obtain timely and appropriate responses on complaints involving the military" (GB.300/8, paragraph 6).

The Committee indicates that this is all the more concerning, as it has previously observed that forced labour is a particular problem in areas of the country with a heavy presence of the army.

**27. The Committee reemphasizes that the illegal exaction of forced labour must continue to be punished as a penal offence, rather than an administrative issue, as required by Art. 25 of the Convention. While taking account of the measures to be taken by the Government regarding recruitment of children, it is also essential that the legal penalties be strictly enforced in cases involving military personnel, including in cases of forced recruitment of children into the armed forces.**

### Conclusion

28. The Committee considers that there are obvious constraints and limits on the contribution that the complaint mechanism can make to the eradication of forced labour. This is due to structural limitations on the mechanism and is magnified by the uncertainties of the present situation in the country. The mechanism can certainly provide welcome relief to individual victims by offering an objective and safe channel for complaints to be raised and addressed, and beyond this it can send a powerful signal to potential perpetrators that they are not free to act with impunity. However, the mechanism is not obviously well-suited to dealing with some of the more extreme and widespread violations in remote areas, of the kind referred to in the documentation submitted by the ITUC.

29. More fundamentally, the complaint mechanism, whilst valuable, does not address the root causes of the forced labour problem that were identified by the Commission of Inquiry and by the High-level Team (see GB.282/4). Namely, it does not address the basic governance relationships prevailing in the country, the role of the army and its self-reliance policy, and the absence of freedom of association and, more generally, freedom of assembly, which recent events have served to graphically illustrate. The prevailing situation in Myanmar, ten years after the establishment of the Commission of Inquiry, seems to provide sad support to the perception that addressing these root causes remains indispensable.

30. In the light of this, the Committee believes that the only way that genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. This requires, beyond the agreement of the Supplementary Understanding, that the authorities establish the necessary conditions for the successful functioning of the complaint mechanism, and that they take the long overdue steps to repeal the relevant provisions of domestic legislation and adopt the appropriate legislative and regulatory framework to give effect to the recommendations of the Commission of Inquiry. **The Committee remains hopeful that, having agreed the Supplementary Understanding, the Government will finally take the required steps to achieve compliance with the Convention in law and in practice and resolve one of the most serious and long-standing cases that this Committee has ever had to address.**

## Niger

### Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

*Articles 1(1) and 2(1) of the Convention. Slavery and slave-like practices.* The persistence of slavery in Niger was one of the matters examined by the Committee in its previous observation and by the Conference Committee on the Application of Standards in June 2004 (92nd Session). In its previous comments, the Committee referred to observations from the International Confederation of Free Trade Unions (ICFTU) – now the International Trade Union Confederation (ITUC) – and to the study carried out in 2001 under the auspices of the ILO on the identification of obstacles to the implementation of fundamental principles and rights at work and proposed solutions in Niger, validated by the Government and the social partners. The Committee observed that in Niger, there was an archaic form of slavery found in nomadic communities and that slave status was still transmitted by birth to persons from certain ethnic groups. The slave is placed at the disposal of the master without charge or in exchange for payment. The relations between master and slave are based on direct exploitation. Slaves work for their masters without remuneration, largely as shepherds, agricultural workers or domestic employees. The Committee noted that the Government acknowledged that slavery had not been totally eradicated and that numerous actions had been undertaken to combat the forced labour of persons reduced to slavery. In terms of legislation, Act No. 2003-025 of 13 June 2003 amended the Penal Code by introducing a section on slavery. A prison term of ten to 30 years and a fine are imposed for reducing someone to slavery or for incitement to relinquish one's liberty or dignity or that of a dependent person in order to become a slave. Slavery offences are likewise defined and punished. Furthermore, associations established for the purpose of combating slavery or similar practices may sue for damages in the civil courts in redress for breaches of the Criminal Slavery Act (section 270-1 to 270-5 of the Penal Code). As to awareness raising, campaigns have been carried out, targeting traditional chiefs in particular. The Committee requested the Government to provide information on the measures taken to assess the extent of slavery in Niger, the programmes or measures implemented specifically for former slaves or descendants of slaves, and the number of persons prosecuted, sentenced and punished for exacting forced labour from persons reduced to slavery.

The Committee notes that in its report for 2005, the Government states that there have been no convictions by the courts as there were no complaints filed by victims. In a later communication, and in response to the ICFTU's observations, the Government again stated that it did not deny that slave-like practices still existed in certain parts of the country and that, on the contrary, it had always treated this as a matter of concern and taken appropriate initiatives. The

Government referred in particular to circulars from the Prime Minister addressed in 2004 and 2005 to the Minister of the Interior following the adoption of the 2003 Act criminalizing slavery and asking him to meet with administrative heads, and religious and traditional chiefs to draw their attention to the pressing need to comply with the law and put an end to all forms of slave-like practices. The Government stated that in the context of cooperation with the Office, a project was to be launched to prevent the persistence of forced labour and similar practices, in the course of which a study might be conducted with a view to gaining more knowledge about the nature and extent of the phenomenon and identifying target groups, and a national action plan against forced labour might be set up.

The Committee notes with interest that since then, a National Committee to Combat Forced Labour and Discrimination was established (Order No. 0933/MFP/T of 4 August 2006) and officially set up in November 2006. Its terms of reference include preventing the persistence of forced labour and combating discrimination through measures to reduce poverty in target areas; preparing a national action plan in this field on the basis of an in-depth diagnostic study; ensuring monitoring of the national action plan. The Committee notes that the abovementioned committee has already met several times and has support from the Office through the Special Action Programme to combat forced labour (SAP-FL) and in particular the support project for combating forced labour and discrimination in Niger (PACTRAD), which have been associated with the above committee's meetings. At its meeting of October 2007, the said committee finalized a plan against the persistence of forced labour and discrimination which is to be submitted to the Government for adoption. The Committee also notes that at the request of the National Committee, the Office is lending its support for a statistical study on child labour and the consequences of slavery, which will be conducted by the National Statistics Institute.

The Committee takes note of all this information. *It hopes that the Government will continue to take all necessary steps to ensure that the National Action Plan is adopted promptly and that the study on the persistence of forced labour is conducted at the earliest possible date. In the Committee's view, it is essential that the Government should have access to reliable quantitative and qualitative data on the various forms of slavery and their consequences, so as to target both the measures to be taken and the beneficiary groups. It hopes that the national action plan will provide for measures to publicize the Act of 2003 incorporating into the Penal Code (sections 270-1 to 270-5) the provisions criminalizing slavery, and for measures to raise the awareness of the population and those involved in combating slavery, particularly religious and traditional chiefs, criminal police officers and magistrates. It would also be appropriate for the action plan to include activities or programmes specifically aimed at former slaves or descendants of slaves to ensure that they have sufficient means of subsistence not to fall back into a situation of dependency and hence exposure to exploitation of their labour.*

Lastly, the Committee points out that under *Article 25* of the Convention, the Government must ensure that the penal sanctions imposed by law are really adequate and strictly enforced. *It asks the Government to indicate whether there have been any court decisions based on sections 270-1 to 270-5 of the Penal Code and, if so, to provide a copy of them. The Committee stresses that it is essential that the perpetrators of slavery offences be prosecuted and, if appropriate, sentenced. It hopes that the Government will take all measures available to it for this purpose and will ensure that the victims are effectively in a position to go to the police and judicial authorities to assert their rights.*

## 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 on the following matters:

*Article 1(a) of the Convention. Political coercion and punishment for holding or expressing views opposed to the established system.* 1. In its earlier comments, the Committee referred to the Public Order Decree No. 5 of 1979, which contained provisions under which public assemblies, meetings and processions on public roads or places of public resort must be previously authorized and may be subject to certain restrictions enforceable with sanctions of imprisonment (involving an obligation to work). The Committee notes that the Public Order Act, Cap. 382, Laws of the Federation of Nigeria, 1990, supplied by the Government with its report, imposes similar restrictions on the organization of public assemblies, meetings and processions (sections 1 to 4), offences being punishable with imprisonment (sections 3 and 4(5)).

The Committee recalls that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It refers in this connection to paragraph 154 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.

*The Committee therefore hopes that the necessary measures will be taken in order to bring the provisions of the Public Order Act into conformity with the Convention. While noting the Government's indication in the report that there is no record of the violation of the provisions of the Act, the Committee asks that, pending the amendment, the Government will provide information on its application in practice, including information on convictions for violation of its provisions and on penalties imposed.*

2. The Committee previously 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 an obligation to work. ***While noting the Government's indication in the report that no journalist has been convicted under this 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. Pending the amendment, the Government is requested to provide information on the application of these provisions in practice, indicating, in particular, any convictions under the above Act and penalties imposed.***

3. The Committee previously noted the Government's indication that the Human Rights Violations Investigation Panel, established in 1999, has concluded its assignment and forwarded the report to the federal Government, which was supposed to release a white paper on it. ***The Committee would appreciate it if the Government would supply copies of the Panel's report and the white paper, as soon as they are released.***

*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: 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 involving an obligation to work for breaches of labour discipline even in the absence of a danger to the safety of the ship or of persons; section 17(2)(a) of the Trade Disputes Act, Cap. 432, of 1990, under which participation in strikes may be punished with imprisonment involving an obligation to work in certain cases.

The Committee previously noted the Government's indications that all these provisions were under consideration by the National Labour Advisory Council. The Government states in its latest report that the review of the labour laws has been completed and submitted to the federal Government for further action. ***The Committee trusts that the legislative provisions referred to above will be amended in the near future and that the legislation will be brought into conformity with the Convention. It asks the Government to 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 has noted 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 Union 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 notes 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. It hopes that the Government's comments will be supplied in its next report, so as to enable the Committee to examine them at its next session.

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:

*I. Articles 1(1) and 2(1) of the Convention*

*A. Debt bondage*

1. 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.***

2. 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.* 3. 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.

4. 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.

**5. 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.* 6. 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.* 7. 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.

8. 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.

9. 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".

**10. 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.* 11. 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.**

*Bonded child labour.* 12. In its earlier comments, the Committee asked the Government to provide information on progress on the implementation of the agreement between the International Programme on the Elimination of Child Labour (IPEC) of the ILO and the Pakistan Carpet Manufacturers' and Exporters' Association (PCMEA), and the agreement signed by the Government in 1997 with the European Commission and the ILO to take measures aimed at the eradication of bonded child labour. With regard to this point and the problem of bonded child labour in general, the Committee notes 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 this problem can be examined more specifically under Convention No. 182. The protection of children is enhanced by the fact that Convention No. 182 requires states which ratify it to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee accordingly asks the Government to refer to its comments on the application of Convention No. 182.

#### *B. Trafficking in persons*

13. The Committee notes with interest 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.* 14. 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.* 15. The Committee notes with interest 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.**

*Trafficking in children.* 16. The Committee has noted previous allegations of the ICFTU as well as indications in the IOM reports referred to above, according to which trafficking in children remains a serious problem in Pakistan. With regard to the problem of trafficking in children, for the reasons set out above concerning bonded child labour, the Committee asks the Government to refer to its comments on the application of Convention No. 182.

#### *II. Restrictions on voluntary termination of employment*

17. 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.**

18. **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.* 19. 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.* 20. 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".

21. *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 that the Government's report contains no reply to previous comments. It is therefore bound to repeat its previous observation, which read as follows:

1. The Committee has noted the observations received in September 2001 from the International Confederation of Free Trade Unions (ICFTU) concerning application of the Convention, which were transmitted to the Government in October 2001 for such comments as it might wish to make. The Committee also notes the communication dated 26 April 2005 from the All Pakistan Federation of Trade Unions (APFTU), which contains comments on the observance of the Convention, and which was forwarded to the Government in June 2005 for any comments it might wish to make on the matters raised therein. *The Committee regrets that the Government has not referred to these observations in its latest report and hopes it will do so in its next report.*

*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.* 2. 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.

3. 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.

4. 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.

5. 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.*

6. In comments made for many years, the Committee has referred to sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969), under which, whoever commits any breach of any term of any settlement, award or decision or fails to implement any such term may be punished with imprisonment which may involve compulsory labour. The Committee

notes the promulgation of the Industrial Relations Ordinance (IRO) of 2002, which has repealed the 1969 Ordinance (section 80). The Committee notes with interest, from the indications of the Government in its latest report, as well as the text of sections 65, 66, and 67 of the IRO, that the penalties of imprisonment have been eliminated.

*Forcible return of seafarers on board ship.* 7. 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.* 8. 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.

9. 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.**

10. 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.**

11. 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.

12. **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.* 13. In its earlier comments, the Committee referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Qadiani

Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is subject to punishment with imprisonment (which may involve compulsory labour) for a term that may extend to three years. The Committee has noted the report submitted to the United Nations Commission on Human Rights in 1996 by the Special Rapporteur on the Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (document E/CN.4/1996/95/Add.1 of 2 January 1996), which indicates that, according to many non-governmental sources, the religious activities of the Ahmadi community are seriously restricted, and that many Ahmadis are reported to be prosecuted under section 298C of the Penal Code (paragraph 41). The Committee has also noted the conclusion of the Special Rapporteur that the State laws related to religious minorities are likely to favour or foster intolerance in society, and that the law applied specifically to the Ahmadi minority is particularly questionable.

14. 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.

15. While noting this information, the Committee points out once again, referring also to the explanations provided in paragraphs 133 and 141 of its General Survey of 1979 on the abolition of forced labour, that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. 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 that the Government's report has not been received. It must therefore repeat its previous observation on the following matters:

*Article 1(c) and (d) of the Convention. 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(1) and 2(1) of the Convention. Debt bondage of indigenous communities in the Chaco.* In comments made since 1997, the Committee has expressed its concern about the existence of cases of debt bondage in the indigenous communities of the Chaco. The Committee observed that debt bondage constituted a serious violation of the Convention.

The Committee notes the comments made in August 2006 by the International Confederation of Free Trade Unions (ICFTU) – now the International Trade Union Confederation (ITUC). The ITUC refers to the practice of forced labour in Chaco, the existence of which has been confirmed in the report: *Debt bondage and marginalization in the Chaco of Paraguay*. The research contained in the report was 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 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 the worker which obliges him, and in many cases his family as well, to work permanently on the estates.

The ITUC also refers to 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 report was confirmed during workshops conducted separately with organizations of employers and workers as well as for the Inspection Services. Subsequently the Ministries of Labour and Justice created an Office of Inspection in Mariscal Estigarriba, in the Chaco region in March of 2006. The Committee has learned, however, from information available from the SAP-FL of the ILO that the work was difficult for the two inspectors appointed to this office, who apparently resigned recently because of the limited support they received from Asunción.

The Committee also notes the conclusions of the Tripartite Seminar of September 2007 relating to the need for the Government to establish, by means of decree, a Tripartite Committee on Fundamental Principles at Work and the Prevention of Forced Labour, consisting of six representatives of each group, Employers, Workers and Government. The Committee, once established, would have 60 days to develop an action plan.

In its report of 2006, the Government referred to the report mentioned above and to the three workshops carried out with various social actors, and it also indicated that it planned to create an inter-institutional and cross-sector National Commission responsible for overseeing this issue. The Committee notes that the Government’s report communicated in September 2007 does not contain any information in this regard.

The Committee notes the convergence of the allegations it has been examining since 1997 on the debt bondage to which the indigenous workers of the Chaco region of Paraguay are being subjected. It notes existing provisions of labour law which, if applied, would contribute to the prevention of indebtedness that requires workers to continue working to pay off their debt, and it notes that measures taken to combat the phenomenon seem stalled at present.

***The Committee hopes that in its next report the Government will communicate information on the various measures taken or envisaged to combat practices by which forced labour is imposed on the indigenous workers of Chaco, in particular information on:***

- ***the operation of the Office of Inspection in Marsical Estigarriba, providing copies of inspection reports that have been prepared by that Office; and***
- ***the creation of the National Tripartite Committee on Fundamental Principles and the Prevention of Forced Labour and its operation, and the communication of a copy of the action plan once it has been adopted.***

***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 planned to ensure the application of Article 25 of the Convention, including copies of relevant judgements.***

***Article 2(2)(c). Obligation to work imposed on non-convicted detainees.*** In its previous comments, the Committee referred to 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 notes 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 notes, 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 observes 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 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.***

## Philippines

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)**

*Article 1(a) of the Convention. Sanctions of imprisonment involving compulsory labour for expression of political views.* In its earlier comments the Committee has noted section 142 of the Revised Penal Code (Inciting to sedition), under which a penalty of imprisonment (involving compulsory labour):

... shall be imposed upon any person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end, or upon any person or persons who shall utter seditious words or speeches, write, publish, or circulate scurrilous libels against the Government ..., or which tend to disturb or obstruct any lawful officer in executing the functions of his office, or which tend to instigate others to cabal and meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, or who shall knowingly conceal such evil practices.

The Committee has also noted section 154 of the Revised Penal Code (Unlawful use of means of publication and unlawful utterances) under which a penalty of imprisonment may be imposed on any person:

... who by means of printing, lithography, or any other means of publication shall publish or cause to be published as news any false news which may endanger the public order, or cause damage to the interest or credit of the State (subsection 1), or who by the same means, or by words, utterances or speeches, shall encourage disobedience to the law or to the constituted authorities or praise, justify, or extol any act punished by law (subsection 2).

The Committee notes the Government’s statements in its latest report, indicating, among other things, that section 142 “does not penalize a person for holding or expressing political views, per se”, and that: “What is punished is the act of making speeches, writings or proclamations that create a clear and present danger to the public safety, public order and public good.”

The Committee recalls that *Article 1(a)* of the Convention 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 refers to its 2007 General Survey on the eradication of forced labour, in which it has explained that the range of activities which must be protected under *Article 1(a)* of the Convention comprises the freedom to express political or ideological views, which may be exercised orally and through the press and other communications media, as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and the adoption of policies and laws reflecting them, and which also may be affected by measures of political coercion (paragraph 152); that the Committee has been concerned to see that the offences laid down in the laws against defamation, sedition, subversion, etc., are not defined in such wide or general terms that they may lead to the imposition of penalties as a punishment for the expression of political or ideological views (paragraph 153); and that provisions such as those in sections 142 and 154(1) of the Revised Penal Code are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views, and in so far as they are enforceable with sanctions involving compulsory labour, they fall within the scope of the Convention (paragraph 159).

***The Committee reiterates its firm hope that the Government will take steps in the very near future to amend or repeal sections 142 and 154 of the Revised Penal Code so as to bring these provisions into conformity with the Convention, and it requests the Government to provide, in its next report, information on the progress made in this direction. The Committee also repeats its request that the Government provide information on the application in practice of sections 142 and 154, including copies of relevant court decisions interpreting these provisions and defining their scope.***

*Article 1(d). Sanctions of imprisonment involving compulsory labour for participation in strikes.* In its earlier comments the Committee noted that, under section 263(g) of the Labor Code, the Secretary of Labor and Employment has discretionary authority to enjoin or force an end to strikes in labour disputes that occur in industries which, in his or her opinion, are “indispensable to the national interest”, by “assuming jurisdiction” over the dispute and certifying it for compulsory arbitration. The President of the Philippines is separately granted the same authority under section 263(g). The declaration of a strike after such an “assumption of jurisdiction” or submission of the dispute to compulsory arbitration is a prohibited activity (section 264(a)), and the violation by any person of any of the provisions of section 264 is punishable by imprisonment (section 272(a) of the Labor Code), which involves an obligation to perform labour (pursuant to section

1727 of the Revised Administrative Code). The Revised Penal Code also lays down sanctions of imprisonment for participants in illegal strikes (section 146).

The Committee recalls that *Article 1(d)* of the Convention prohibits the use of any form of forced or compulsory labour as a punishment for having participated in strikes. The Committee further recalls its 2007 General Survey on the eradication of forced labour, in which it explained that the suppression of the right to strike enforced by sanctions involving compulsory labour is compatible with the Convention only in so far as it is limited to situations involving an acute national crisis, and even then the suspension of rights must be strictly limited in time and scope to what is required to meet the emergency situation (paragraph 183); or to essential services in the strict sense of the term – only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (paragraph 185); or to public servants exercising authority in the name of the State (paragraph 184).

The Committee must once again point out that section 263(g) of the Labor Code is drafted in such general terms that it could be applied in situations extending well beyond those which conform to the criteria enumerated above. The Committee notes the statement of the Government in its 2007 report indicating that the requisite criteria under the Convention are in fact considered in the practical application of section 263(g). The Committee, however, notes from a Government news release that, in the year 2004 alone, the Department of Labor and Employment (DOLE) intervened under section 263(g) on 47 occasions to “assume jurisdiction” of labour disputes at the point of the filing of strike notices, as a method of “resolving” those disputes.

The Committee notes from the Government’s latest report its further statement indicating that it is not the participation in illegal strikes (prohibited under subsection (a) of section 264) which is penalized under section 272(a), but only the illegal incidental activities prohibited under subsections (b)–(e) of section 264. The Committee notes, however, that, by its very terms, section 272(a) makes the violation by any person “of any of the provisions of article 264” punishable with imprisonment. ***The Committee asks the Government to supply copies of any interpretive court decisions concerning the sanctions imposed in terms of sections 272(a) and 264(a). The Committee firmly repeats its request that the Government take the necessary steps to amend or repeal sections 263(g), 264(a) and 272(a), in order to bring these provisions of the Labor Code into compliance with the Convention and that, in its next report, it supply information on the progress made towards this end. The Committee also refers the Government to its observations made on this point in relation to the application of Article 3 of Convention No. 87.***

## 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.* The Committee for many years has expressed its concern about the failure of the Government to comply with *Article 25* of the Convention, particularly in light of the special problems faced by migrant workers in Saudi Arabia. The Committee has previously indicated that *Article 25* of the Convention requires a member State to have specific provisions punishing the illegal exaction of forced or compulsory labour with penal sanctions. The Committee expressed its hope that measures would soon be taken to introduce such provisions, and that the penalties imposed by law would be really adequate and strictly enforced, as required by the Convention. The Committee notes that in its 2005 report the Government indicated that the new Labour Code would include a text on the prohibition of forced labour and the penalties for its exaction.

The Committee notes the new Labour Code supplied by the Government with its 2007 report. It notes with regret, however, that the Code contains no prohibition on forced labour and no penalties, and that in section 7 it continues to exclude agricultural workers and domestic workers, an exclusion that has particular significance for migrant workers who are often employed in those sectors. The Committee notes, as it has previously, that the lack of such protection for migrant workers exposes them to exploitation in their working conditions, such as 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 asks that in its next report the Government inform it about the measures it is taking to amend the Labour Code to provide for the prohibition of forced and compulsory labour, for penalties for the illegal exaction of forced or compulsory labour, and for such penalties to be adequate and strictly enforceable, as well as measures that encompass migrant workers, with a view to protecting them from being exposed to situations in which they are vulnerable to exploitation of that nature.***

*Articles 1(1) and 2(1). Vulnerable situation of migrant workers with regard to the illegal exaction of forced labour.* The Committee previously noted the adoption, through Decision No. 166 of 12 July 2000 of the Council of Ministers, of “Regulations governing the relationship between employers and migrant workers”, and that according to section 3 of those regulations, “migrant workers may keep their passports or the passports of members of their families and may be authorized to move within the Kingdom as long as they have a valid residence permit”. The Committee has also noted that section 6 provides for the creation of a rapid mechanism for the examination of conflicts which may arise and for their settlement by the competent authority. In its previous observation the Committee expressed the hope that the Government would provide full information on the dispute-settlement mechanism under section 6 of Order No. 166, as well as on the sanctions that may be imposed on an employer for non-observance of those regulations. With regard to the dispute-settlement mechanism under section 6, the Government, in its 2005 report, stated only that the departments at labour

offices dealing with such issues undertake to resolve disputes expeditiously, and that delays and backlogs were problems common to labour judiciaries, but the Government had this problem under examination. ***The Committee hopes that the Government will report on the measures it has taken to establish and bring into operation the rapid dispute settlement mechanism, as prescribed under section 6 of Order No. 166.***

The Committee notes that in its 2005 report the Government indicated that the sanctions prescribed under section 6 of Order No. 166 for non-observance of the regulations include terminating the labour relationships and prohibiting an employer from contracting for the employment of migrant workers. ***The Committee hopes that in its next report the Government will include information about the number of cases and the circumstances in which those sanctions have been imposed to date, as well as information about whether there are any other penalties prescribed by law for violations of the regulations under Order No. 166 and, if so, about the imposition of any such penalties. The Committee hopes that the Government will also explain how it is ensured that the application of sanctions prescribed under section 6 does not adversely affect the workers involved by causing them to be placed in precarious situations that may subject them to further exploitation through the illegal exaction of forced or compulsory labour.***

The Committee notes Circular No. 55 of 10 March 2001, which, according to the Government's statement in its 2005 report, provides for an employee's transfer to another employer in cases where long delays in existing dispute-resolution procedures cause economic hardship for the migrant worker involved in the pending dispute. ***The Committee hopes that the Government will provide information relating to the application in practice of this measure, including the number of cases in which it has been applied.***

## Sierra Leone

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1961)***

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

*Articles 1(1) and 2(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 in its report 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(1) and 2(1) of the Convention. Legislation concerning destitute persons.* Over a number of years, the Committee has been referring to certain provisions of the Destitute Persons Act 1989 (which repeated without change some provisions of the Destitute Persons Act 1965), 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 has previously pointed out 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 previously noted the Government's repeated indication that section 13 of the Act should be interpreted in the context of rehabilitative services for destitute persons and 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, and also received payment for their participation. While noting these indications concerning the current practice under the Destitute Persons Act 1989, which appears to be in conformity with the Convention, the Committee previously drew the Government's attention 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 notes the Government's statement in its latest report that it will be reviewing the necessity to amend section 13 of the Act to better articulate the voluntary nature of the activity in its current review of the Act, which is expected to be completed by early 2008. ***The Committee therefore expresses the firm hope that section 13 of the Act will***

soon be amended so as to provide clearly that any work in a welfare home is to be done voluntarily, thus bringing the abovementioned legislation into conformity with the Convention and the indicated practice. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.

## Sri Lanka

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1950)**

*Article 2(2)(d) of the Convention. Emergency regulations.* Over a number of years, the Committee has been referring to the state of emergency declared on 20 June 1989 under the Public Security Ordinance, 1947, and the powers of the President under section 10 of the Emergency (Miscellaneous Provisions and Powers) Regulations (adopted in 1989 and revised in 1994, 2000 and 2005). The Committee has duly noted the Government's repeated statement in its reports that, in view of the ongoing civil war in the country, it is imperative that the provisions of the Emergency Regulations are to be in force in order to prevent any breakdown in the national security and to ensure the maintenance of essential services in the country. However, the Committee reiterates, referring also to paragraphs 62–64 of its 2007 General Survey on the eradication of forced labour, that recourse to compulsory labour under emergency powers should not only be limited to circumstances which would endanger the existence or well-being of the whole or part of the population, but that it should also be clear from the legislation itself that the power to exact labour is limited in extent and duration to what is strictly required to cope with the said circumstances. **The Committee reiterates its hope that the necessary measures will at last be taken in order to bring the legislation into conformity with the Convention on this point and that the Government will report the progress made in this regard.**

*Articles 1(1) and 2(1). Compulsory public service.* In its earlier comments, the Committee referred to sections 3(1), 4(1)(c) and 4(5) of the Compulsory Public Service Act, No. 70 of 1961, under which compulsory public service of up to five years may be imposed on graduates. The Committee has noted the Government's repeated statement in its reports that no prosecutions under the Act have been reported so far. The Government repeats in its 2006 report that the Act has not been implemented in practice and has in effect fallen into disuse. However, the Government indicates that the matter has been referred to the Ministry of Public Administration and Home Affairs for further consideration and steps have been taken to repeal the Act. **The Committee therefore expresses the hope that the Compulsory Public Service Act will soon be repealed and the legislation will be brought into compliance with the Convention and the indicated practice.**

The Committee is also addressing a request on certain other points directly to the Government.

## Sudan

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1957)**

*Articles 1(1) and 2(1) of the Convention. Abolition of forced labour practices.* 1. For many years, the Committee has been examining information concerning the practices of abduction and forced labour affecting thousands of women and children in the regions of the country where an armed conflict was under way. The Committee has pointed out on numerous occasions that these situations constitute gross violations of the Convention. These victims are forced to perform work for which they have not offered themselves voluntarily, and the work is performed under extremely harsh conditions, as well as the victims being ill-treated in ways which may include torture and death. In its earlier comments, the Committee considered that the scope and gravity of the problem were such that it was necessary to take urgent action that was commensurate in scope and systematic. The Government was 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.

2. The Committee has noted with interest the adoption in 2005 of the Interim National Constitution, which followed the signing of the Comprehensive Peace Agreement in January 2005. The Committee notes with interest that Part Two of the Interim National Constitution contains the Bill of Rights which promotes the human rights and fundamental freedoms, and that Article 30 of the Interim National Constitution specifically prohibits slavery and forced or compulsory labour.

3. The Committee has taken note of the Government's report received in October 2006 and of the summary reports of activities of the Committee for the Eradication of Abduction of Women and Children (CEAWC) supplied in November 2005 and October 2006, as well as of the discussion that took place in the Conference Committee on the Application of Standards in June 2005. It has also noted the observations dated 6 September 2005, received from the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation), concerning the application of the Convention by Sudan, as well as the Government's reply to these observations.

*Conference Committee on the Application of Standards.* 4. The Committee has noted that, in its conclusions adopted in June 2005, the Conference Committee 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 practices of abduction and the exaction of forced labour. The Committee noted that, while there had been positive and tangible steps, including the conclusion of the Comprehensive Peace Agreement, it was of the view that there was no verifiable evidence that forced labour had been abolished. The Committee invited the

Government to avail itself of the technical assistance of the ILO and other donors to enable it to eradicate the practices identified by the Committee of Experts and to bring the perpetrators to justice. The Committee considered that only an independent verification of the situation in the country would enable it to determine that forced labour in the country had ended. The Committee decided that, in the framework of the ILO technical assistance, a full investigation of the facts be undertaken and requested the Government to provide the ILO with all the necessary assistance.

*United Nations bodies.* 5. The Committee notes that, in the UN Security Council resolution 1769 (2007), the Security Council noted with strong concern ongoing attacks on the civilian population and humanitarian workers and continued and widespread sexual violence. The resolution referred to the report of the Secretary-General and the Chairperson of the African Union Commission on the Hybrid operation in Darfur and the report of the Secretary-General of 23 February 2007. The resolution emphasized the need to bring to justice the perpetrators of such crimes and urged the Government of Sudan to do so and reiterated its condemnation of all violations of human rights and international humanitarian law in Darfur. The Committee also notes that, in the Decision 2/115, of the UN Human Rights Council concerning Darfur, of 28 November 2006, the Human Rights Council, while welcoming the Darfur Peace Agreement, noted with concern the seriousness of the human rights and humanitarian situation in Darfur and called on all parties to put an immediate end to the ongoing violations of human rights and international humanitarian law, with a special focus on vulnerable groups, including women and children. The Committee further notes a report on the situation of human rights in Darfur prepared by the group of experts mandated by Human Rights Council resolution 4/8 presided by the Special Rapporteur on the situation of human rights in Sudan (A/HRC/5/6, of 8 June 2007), in which the experts group shared the concern of the Council regarding the seriousness of ongoing violations of human rights and international humanitarian law in Darfur as well as the lack of accountability of perpetrators of such crimes. According to the recommendations contained in the report, all allegations of violations of human rights and international humanitarian law must be duly investigated and perpetrators must be promptly brought to justice (paragraph 43(h)).

*Comments from workers' organizations.* 6. In the observations of 2005 referred to above, the ICFTU welcomed the fact that the Government had finally recognized the scale of the problem in its statement to the Conference Committee in June 2005 and, in particular, the Government's indications that the CEAWC had successfully resolved, through documentation, retrieval and reunification measures, 11,000 cases of abductions. However, the ICFTU expressed concern about the assistance and reintegration of these individuals into Sudanese society. While welcoming the positive developments, such as the signing of the Comprehensive Peace Agreement and the adoption of the Interim National Constitution, which provided a historic opportunity for the Government to resolve the issue of abduction and forced labour once and for all, the ICFTU expressed the view that it would not automatically lead to an end to abductions, exaction of forced labour and associated human rights violations, as events in Darfur had demonstrated. It also referred in this connection to the information concerning widespread and systematic cases of sexual slavery and forced prostitution, and called on the Government to ensure that such crimes are prosecuted and punished severely. The ICFTU believed 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 – contributed to the continuation of this practice throughout the civil war and more recently in Darfur. Finally, the ICFTU strongly supported a recommendation made by the Conference Committee that “only an independent verification of the situation in the country would enable it to determine that forced labour in the country had ended” and urged the Government to fully support and provide assistance to the ILO investigation on abductions in Sudan.

*Government's response.* 7. In its 2006 report, the Government confirms its strong and continued commitment to completely eradicate the phenomenon of abductions and to provide continued support to the CEAWC. The Government indicates that, out of 14,000 cases of abductions, the CEAWC has already successfully resolved 11,000 cases and has been able to reunify abducted persons with their families in 3,394 cases. The Government has confirmed its statement to the Conference Committee that abductions have stopped completely, which, according to the Government, has been also confirmed by the Dinka Chiefs Committee (DCC). The Government states that the workers' concern about the assistance and reintegration of the abductees has no factual base. As regards the prosecution of perpetrators, the Government repeats its previous indications that the CEAWC has 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. It also states that, within the context of the comprehensive peace process, there is an argument for not pursuing prosecutions against those responsible for abductions and forced labour since 1983 (and even before) in the spirit of national reconciliation.

**8. *While noting the Government's renewed commitment to resolve the problem, as well as the progress achieved by the CEAWC in the liberation of abductees, the Committee strongly urges the Government to pursue its efforts with vigour in order to resolve the remaining cases of abductions and reintegrate the victims, thus putting an end to the long-standing and large-scale practice of the exaction of forced labour through abduction of women and children. 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 trusts 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.***

*Article 25. Penalties for the illegal exaction of forced or compulsory labour.* 9. In its earlier comments, the Committee referred to a 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. While noting the Government's view expressed in the report that, within the context of the comprehensive peace process, there is an argument for not pursuing prosecutions against those responsible for abductions and forced labour in the spirit of national reconciliation, the Committee again draws the Government's attention to the provision of *Article 25* of the Convention. This Article provides that "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 considers that the non-application of penal sanctions to perpetrators is contrary to this provision of the Convention and will have the effect of ensuring impunity for abductors who exploit forced labour. ***The Committee therefore trusts that the necessary measures will 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 requests that the Government 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.***

[The Government is asked to supply full particulars to the Conference at its 97th Session and to reply in detail to the present comments in 2008.]

### **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 Penal Code 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 has noted the adoption in 2005 of the Interim National Constitution, which contains the Bill of Rights promoting human rights and fundamental freedoms. It has noted that the declaration of emergency was lifted in July 2005 as a result of signing of the Comprehensive Peace Agreement. The Committee has also noted the Government's indication in its report that a draft labour law has been finalized and prepared for submission to the competent authorities for adoption. ***The Committee asks the Government to supply a copy of the new law, as soon as it is adopted. It also asks the Government once again to supply copies of the legislation in force concerning freedom of association, assembly, and expression of political opinion.***

The Committee takes note of the situation regarding human rights in Sudan as described in Decision 2/115 of the UN Human Rights Council concerning Darfur, of 28 November 2006, in the report on the situation of human rights in Darfur prepared by the group of experts mandated by the Human Rights Council resolution 4/8 presided by the Special Rapporteur on the situation of human rights in Sudan (A/HRC/5/6, of 8 June 2007) and in the statement issued by the Special Rapporteur on the situation of human rights in Sudan, of 6 August 2007. In its Decision 2/115 referred to above, the UN Human Rights Council noted with concern the seriousness of the human rights and humanitarian situation in Darfur and called on all parties to put an immediate end to the ongoing violations of human rights and international humanitarian law. In her statement referred to above, the Special Rapporteur pointed out that, despite the potential for democratic transition and optimism created by the Interim National Constitution and the Bill of Rights, violations of civil and political rights continue, including limitations on freedom of expression. She welcomed the Government's acknowledgement of the seriousness of the situation and strongly encouraged it to take action without delay to improve it, so that people can fully enjoy their human rights and fundamental freedoms.

As the Committee repeatedly pointed out, it observes the importance for the effective respect of the Convention of the legal guarantees regarding freedom of assembly, expression, demonstration and association, and the direct effect which restriction of these rights, both in law and in practice, can have on the application of the Convention.

The Committee previously noted the Government's indication in its report that, according to the Prison Regulations of 1999, there is no compulsory labour in prisons and work is optional for prisoners. ***It requests the Government once again to supply a copy of the 1999 Prison Regulations with its next report, so as to enable the Committee to ascertain whether national legislation is compatible with the Convention.***

The Committee is addressing a more detailed request on the above matters directly to the Government.

## **Swaziland**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1978)**

*Articles 1(1) and 2(1) of the Convention. Legislation concerning compulsory public works or services.* In its earlier comments, the Committee referred to the Swazi Administration Order, 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. With reference to the comments it has been making for a number of years concerning the Swazi Administration Act, No. 79 of 1950, which contained similar provisions and which was repealed by the abovementioned Order No. 6 of 1998, the Committee observed that provisions of this kind were in serious breach of the Convention.

The Committee notes with interest the Government's indication in its report received in January 2007 that the Swazi Administration Order, 1998, was challenged at the High Court of Swaziland (Case No. 2823/2000), which declared the Order null and void, and that the Swaziland Government did not appeal against that judgement. *The Committee would appreciate it if the Government would communicate a copy of the High Court judgement with its next report.*

## Syrian Arab Republic

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Articles 1(1) and 2(1) of the Convention.* 1. *Freedom of persons in the service of the State to leave their employment.* For many years, the Committee has been referring to Legislative Decree No. 46 of 23 July 1974, amending section 364 of the Penal Code, 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. In its reports received in 2006 and 2007, the Government confirms its previous indications that the amendment of the Penal Code is currently ongoing and that the Committee's comments are being taken into account in order to ensure conformity with the Convention. *Recalling, with reference to paragraphs 96–97 of its General Survey of 2007 on the eradication of forced labour, that persons in the service of the State should have the right to leave the service on their own initiative within a reasonable period, either at specified intervals or with previous notice, the Committee reiterates the firm hope that the necessary measures will soon be taken in order to bring the legislation into conformity with the Convention and the indicated practice, and that the Government will provide information on the action taken to this end.*

2. *Legislation on vagrancy.* Over 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 report that the amendments of the Penal Code will accommodate the Committee's request. *The Committee therefore expresses the firm hope that the necessary measures will soon be taken with a view to clearly excluding from the legislation any possibility of compulsion to work, either by repealing section 597 or by limiting its scope to persons engaging in illegal activities, so as to bring legislation and practice into conformity with the Convention.*

*Article 2(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 with respect to compulsory labour, particularly those 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.), which provide for the call up of inhabitants for periods of up to two months, in circumstances that go beyond the exception authorized by the Convention for "any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity ... and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population".

The Committee has noted the Government's repeated indications in its reports that Decree No. 133 of 1952 is currently being reviewed with a view to bringing it into conformity with the Convention. The Government reiterates that the provisions of Decree No. 133 are only applied in emergencies and to very limited categories. It also refers in this connection to 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. The Government repeatedly indicates that Legislative Decree No. 15 does not contain provisions similar to those in the above sections 27 and 28 of Decree No. 133.

*While noting this information, the Committee trusts that the necessary measures will soon be taken to formally repeal or amend the above provisions of Legislative Decree No. 133 of 1952 so as to limit the possibility of exacting labour to situations of emergency in the strict sense of the term, as defined in the Convention, and that the Government will soon be in a position to report on the measures taken to this end. The Committee again requests the Government to communicate a copy of Legislative Decree No. 15 of 11 May 1971 referred to above.*

## **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 the 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 the Government's indication in its report that a draft legislative decree amending the Penal Code had been prepared by the Ministry of Justice in response to the economic and social developments witnessed by the country and to fulfil the request made by the Committee of Experts. The Government indicated that the draft legislative decree was aiming at the elimination of all obligation to perform prison labour and in particular, that the terms "imprisonment with labour", "life imprisonment with hard labour" or "temporary hard labour" would be removed from the Penal Code. In its 2006 and 2007 reports, the Government reaffirmed its commitment to bring legislation into conformity with the ratified ILO Conventions, taking due account of the Committee's comments and, in particular, confirmed its intention to remove the above terms from the Penal Code.

*The Committee expresses the hope that, following the adoption of the draft legislative decree, 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 also hopes that the draft legislative decree referred to above will soon be adopted and that the Government's next report will contain full information on the progress made in this regard.*

## **United Republic of Tanzania**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1962)**

The Committee notes with satisfaction that the Employment and Labour Relations Act, 2004 (No. 6) has repealed the Employment Ordinance (Cap. 366), under which compulsory labour could be imposed for public purposes.

*Articles 1(1) and 2(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 referred in this connection to the following provisions:

- article 25, paragraph 1, of the 1985 Constitution, which provides for a general obligation to work; article 25, paragraph 3(d), of the Constitution, which provides that no work shall be considered as forced labour if it is relief work that is part of compulsory nation-building initiatives, in accordance with the law, or national efforts in harnessing the contribution of everyone in the work of developing the society and national economy and ensuring success in development;
- 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 Finances Act, 1982, under which compulsory labour may be imposed, inter alia, by administrative authority, on the basis of a general obligation to work and 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.

The Committee has previously expressed its concern at the institutionalized and systematic compulsion to work established in law at all levels, in the National Constitution, Acts of Parliament and District by-laws, in contradiction with Convention No. 29 and Article 1(b) of Convention No. 105, also ratified by the United Republic of Tanzania, which prohibits the use of compulsory labour for development purposes.

The Committee notes the Government's repeated statement concerning practical difficulties encountered in the application of the Convention, which in most cases were due to application of by-laws and directives issued by local authorities imposing compulsory labour on the population. However, the Government stated in its 2003 and 2004 reports that it has taken very serious note of the Committee's concerns, and that the identified laws – such as 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 Finances Act, 1982 – had been addressed by the Task Force of the Labour Law Reform, which had recommended to the relevant authorities to make appropriate amendments to these laws.

*The Committee urges the Government to take the necessary measures to repeal or amend the numerous provisions which are incompatible with the Convention and to do so expeditiously. The Committee requests the Government to report on the progress made.*

The Committee is addressing a request on certain other points directly to the Government.

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

The Committee notes with satisfaction that the Employment and Labour Relations Act, 2004 (No. 6), has repealed the Industrial Court of Tanzania Act (No. 41 of 1967), which contained provisions prohibiting strikes contrary to the procedure under the Act, enforceable with penalties of imprisonment (involving an obligation to perform labour).

*Article 1(a), (b) and (c) of the Convention. Penalties involving compulsory labour as a punishment for expressing political views, for failure to engage in socially useful work and for various breaches of labour discipline.* For many years, the Committee has been referring to certain provisions of the Penal Code, the Newspaper Act, the Merchant Shipping 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 Tanzania, and which are contrary to *Article 1(b)* of this Convention.

The Committee noted the Government's statements in its 2003 and 2004 reports that the Committee's views and comments made on the provisions of the above laws which are incompatible with the Convention 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. As regards the abovementioned Merchant Shipping Act, the Government indicated in its 2002 report that the International Maritime Organization (IMO) had prepared proposals for the amendment of the Act, which had been submitted to the Government.

***The Committee reiterates firm hope that the necessary action will be taken in the near future in order to repeal all provisions incompatible with the Convention, and that the Government will soon be able to report on progress made in this regard.***

The Committee is again addressing a more detailed request on the above matters directly to the Government.

## **Thailand**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1969)**

*Articles 1(1), 2(1) and 25 of the Convention. 1. 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 has noted the Government's reply to its previous observation on the subject, as well as other information communicated in its reports received in 2006 and 2007. 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.

*2. Trafficking in persons for the purpose of exploitation – communication from the international workers' organization.* The Committee has noted the Government's reply to its earlier comments, as well as other information communicated by the Government in its 2006 and 2007 reports. It has also 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 in its latest report 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.**

3. *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 with interest 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.***

## Trinidad and Tobago

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)**

The Committee has noted the Government's brief reports on the application of the Convention received in 2006 and 2007.

*Article 1(c) and (d) of the Convention. Sanctions involving compulsory labour for breaches of labour discipline and participation in strikes.* For a number of years the Committee has been referring to sections 157 and 158 of the Shipping Act, 1987, section 8(1) of the Trade Disputes and Protection of Property Ordinance and section 69(1)(d) and (2) of the Industrial Relations Act, Cap. 88:01, under which penalties of imprisonment (involving compulsory labour under the Prisons Rules) may be imposed for various breaches of labour discipline and participation in strikes in circumstances where the life, personal safety or health of persons are not endangered. The Committee has noted the Government's repeated indications in its earlier reports that efforts were underway to amend the provisions mentioned above and that no sanctions had been imposed under these provisions in practice.

The Government reiterates in its 2006 report that no amendments have been made to the legislation in question and that the relevant ministries under whose authority the acts are administered have not indicated any immediate intention of making amendments to this legislation.

***Noting that the legislative amendments required have been under consideration for many years, the Committee trusts that the Government will not fail to take all the necessary measures in order to bring the abovementioned provisions into conformity with the Convention, and that it will soon be in a position to report the progress made in this regard.***

## Turkey

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1998)**

*Articles 1(1), 2(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.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)**

The Committee has noted the Government’s reply to its earlier comments, and it has also noted the observations of the Confederation of Public Servants Trade Unions, the Confederation of Progressive Trade Unions of Turkey (DISK), the Confederation of Turkish Trade Unions (TÜRK-İŞ), and the Turkish Confederation of Employer Associations (TISK), communicated by the Government with its report.

*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.***

## United Kingdom

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1931)***

The Committee has noted the information supplied by the Government in reply to its earlier comments. It has also noted a communication dated 24 October 2005 received from the Trades Union Congress (TUC), which contains the TUC's response to the Government's report, as well as a communication dated 29 August 2006, whereby the International Confederation of Free Trade Unions (ICFTU) (currently the International Trade Union Confederation – ITUC) submitted comments on the application of the Convention by the United Kingdom. The Committee notes that these communications have been forwarded to the Government for any further comments it might wish to make and hopes that such comments will be supplied by the Government with its next report.

*Article 1(1) and Article 2(1) and (2)(c) of the Convention. Privatization of prisons and prison labour. Work of prisoners for private companies.* In its earlier comments concerning the privatization of prisons and work of prisoners for private entities, the Committee 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 has previously 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 employment relationship.

The Government reiterates its view that its approach to the work of prisoners for private entities is in line with the aims of the Convention. It states that there is no real difference between supervisory arrangements for public and private prisons in the United Kingdom, where prison officers serving in private prisons have to be licensed by public authorities. The Government indicated previously that it could see no justification for requiring different systems of employment for public or private sector work in prisons, where adequate safeguards against abuse are in place. The Committee notes, however, that these views have again been rejected by the TUC in its response to the Government's report contained in the communication referred to above. The TUC has also expressed the view that the supervisory arrangements in private prisons do not amount to the level of public supervision required by the Convention for such work: while prison officers employed by private companies have to be licensed by the public authorities, that does not amount to day-to-day supervision of prisoners' work by the public authorities.

While having noted these views and comments, the Committee recalls 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. By virtue of this provision, 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. In other words, the two conditions apply 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".

As the Committee pointed out in paragraph 106 of its General Survey of 2007 on the eradication of forced labour, 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; therefore, it applies to all work organized by privately run prisons. Consequently, the privatization of prisons and/or of prison labour is only compatible with the Convention 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. 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 work of the same type upon their release, or the opportunity to work cooperatively in a controlled environment enabling them to develop team skills. The Committee has indicated that all of these factors should be taken as a whole in determining whether consent was freely given and informed; they also should be considered and assessed by the public authorities (see paragraphs 59–60 and 114–120 of the Committee's General Survey of 2007 referred to above).

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 countries to apply the Convention when designing or implementing a system of privatized prison labour, once the abovementioned requirements are observed. *Noting the Government's confirmed willingness to cooperate with the ILO on this matter, the Committee requests that the necessary measures be taken so as to ensure that free and informed consent is required for the work of prisoners in privately operated prisons in accordance with the factors outlined by the Committee as set out above.*

*In particular, the Committee requests the Government to provide, in its next report, information:*

- *on the action taken to ensure that the informed written formal consent to perform work is obtained from such prisoners without the menace of any penalty;*
- *on the action taken to ensure that such formal consent is authenticated by the existence of objective and measurable factors such as the prisoners performing work in conditions approximating a free labour relationship, together with other advantages such as learning of new skills which could be deployed when released; the offer of continuing work of the same type upon release; or the opportunity to work cooperatively and develop team skills, or other similar factors;*
- *on the objective and measurable factors which are to be taken into account by public authorities in order to ensure that voluntariness of the consent is authenticated;*
- *on the procedures undertaken by public authorities to regularly assess that such objective and measurable factors are in place in order to ensure that work performed by prisoners is voluntary.*

*Articles 1(1) and 2(1). Trafficking in persons for the purpose of exploitation.* Referring to its earlier comments, the Committee has noted with interest the comprehensive information provided by the Government on measures taken to

combat trafficking in persons for the purpose of sexual and labour exploitation. It has noted, in particular, the adoption of the Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004, which criminalizes trafficking for labour exploitation, the Sexual Offences Act, 2003, which has reinforced provisions covering trafficking for the purposes of sexual exploitation, as well as the Gangmasters (Licensing) Act, 2004, and the Gangmasters (Licensing Authority) Regulations, 2005, which establish a system of licensing and registration of labour providers operating in the agriculture, shellfish-gathering and associated processing sectors. It has also noted with interest that the Government is participating in a project launched by the ILO Special Action Programme to combat Forced Labour (SAP-FL), which focuses on the forced labour dimensions of trafficking in selected European “source” and “destination” countries. Finally, the Committee has noted the establishment in 2004 of an interdepartmental Ministerial Group on Human Trafficking to ensure maximum effectiveness of the work undertaken by the Government to prevent, disrupt and prosecute trafficking and support victims, as well as a project called “the POPPY Scheme” aiming at the supporting of enforcement action, including prosecution and disruption of trafficking activity. ***Noting the Government’s indication in the report that the scheme is currently being evaluated, the Committee hopes that the Government will provide information on the results of its evaluation, particularly as regards the efficiency of prosecution, punishment of the offenders and victim protection measures.***

In its previous comments, the Committee referred to the observations by the TUC concerning the situation of workers from abroad who fall victim to trafficking and find themselves in conditions which would amount to forced labour, in which the TUC expressed the view that a fundamental weakness in the existing law and regulations remains that workers who denounce these practices, and in particular if they leave that employment, may find themselves at great risk of deportation. In its latest communication referred to above, the TUC again expresses its concern with the fact that there is a great risk that deported trafficked workers may be delivered back into the hands of the criminal gangs that trafficked them in the first place and thus may be trafficked yet again. In the TUC’s view, an essential component of effective victim protection is the right of liberated trafficked workers to stay in the United Kingdom rather than be deported to their country of origin or the last country of residence.

The Committee previously noted the Government’s indication in its 2002 report that there was already provision for victims of trafficking to be granted exceptional leave to remain in the United Kingdom and that, in the Government’s view, these arrangements were best considered on a case-by-case basis, since any blanket grant of residency is open to abuse and may create a perverse incentive for traffickers to exploit more victims, by suggesting that they will be granted residency if they are trafficked. The Committee has noted the Government’s detailed explanations in its 2005 and 2007 reports concerning a grant of humanitarian protection, discretionary leave or leave outside the immigration rules, which, in the Government’s view, allows a fully flexible approach to be applied. ***While having noted these explanations, the Committee would appreciate it if the Government would provide information on how these arrangements work in practice, as well as information on any further measures taken or envisaged to protect the victims of trafficking. In particular, please provide information on the implementation of the UK Action Plan on Tackling Human Trafficking, as well as information on the activities of the UK Human Trafficking Centre referred to in the Government’s latest report.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1957)**

*Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers.* In its earlier comments, the Committee referred to section 59(1) of the Merchant Shipping Act, 1995, which provides that a seafarer who combines with other seafarers employed on the same ship at a time when the ship is at sea to disobey lawful commands, neglect any duty which is required to be discharged, or impede the progress of a voyage or the navigation of the ship, is liable, on conviction on indictment, to imprisonment for a term not exceeding two years (which involves compulsory prison labour) or a fine or both. The Committee also noted the Government’s indication that section 59 is applicable to seafarers who withdraw their labour in furtherance of an industrial dispute.

The Committee has noted the Government’s indication in its 2005 report that it has not been possible to carry out the proposed consultations with the shipping industry on whether or not section 59 should be amended, as a result of the need to progress legislative measures of a higher priority. The Government also states that, in deciding the priority to be afforded to the proposed changes to this section, the Government has had regard to its view expressed previously, that the above section does not conflict with the Convention.

The Committee recalls in this connection, referring also to the explanations given in paragraphs 179–181 of its 2007 General Survey on the eradication of forced labour, that sanctions of imprisonment (involving an obligation to perform labour) relating to breaches of labour discipline are incompatible with the Convention, and only sanctions specifically relating to acts tending to endanger the safety of the ship or the life or health of persons would not be covered by the Convention.

The Committee has noted the Government’s intention expressed in the report to carry out consultations to assess the attitude of all sides of industry to the proposal to make changes to section 59, as well as the Government’s repeated indication that, in order to incorporate the proposed changes to this section, it will be necessary to proceed with an Order under the Regulatory Reform Act, 2001, which is an extremely time-consuming process and is subject to Parliamentary scrutiny. ***The Committee expresses the firm hope that section 59(1) of the Merchant Shipping Act, 1995, will be amended, either by repealing sanctions involving compulsory labour or by restricting their application to the situations***

where the ship or the life or health of persons are endangered, so as to bring the merchant shipping legislation into conformity with the Convention.

Noting also the Government's indication in its 2005 report that there have been no prosecutions under section 59 in recent times, the Committee hopes that the Government will supply copies of the relevant court decisions, if and when such prosecutions are instituted.

The Committee is again addressing a request on certain other points directly to the Government.

## Zambia

### Forced Labour Convention, 1930 (No. 29) (ratification: 1964)

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons for the purpose of sexual and labour exploitation. In its earlier comments, the Committee referred to a communication received in October 2002 from the International Confederation of Free Trade Unions (ICFTU) (now the International Trade Union Confederation, ITUC), which contained allegations concerning trafficking of women and children to neighbouring countries for the purpose of forced prostitution and kidnapping of Zambians by Angolan combatants who took them to Angola to perform various forms of forced labour. The Committee has noted the Government's reply to these allegations received in August 2006. The Government states that cases as referred to by the ICFTU have taken place, but they are minimal. However, the Government indicates that Zambia is mainly used as a transit point for trafficked persons to other countries rather than a source.

Referring to its general observation concerning the issue of trafficking in persons made in 2000, the Committee asks the Government to provide, in its next report, information on measures taken or contemplated to prevent, suppress and punish trafficking in persons for the purpose of exploitation, and in particular information on the following aspects of law and practice:

- provisions of national law aimed at the punishment of trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- measures taken to ensure that the penal provisions punishing trafficking in persons are strictly enforced, including, in particular, measures designed to encourage the victims to turn to the authorities (such as permission to stay in the country, efficient protection of victims willing to testify);
- measures designed to strengthen the active investigation of organized crime with regard to trafficking in persons, including international cooperation between law enforcement agencies with a view to preventing and combating the trafficking in persons;
- cooperation with employers' and workers' organizations as well as non-governmental organizations engaged in the protection of human rights and the fight against the trafficking in persons.

As regards, more particularly, trafficking in children, the Committee asks the Government to refer to its comments made under the Worst Forms of Child Labour Convention, 1999 (No. 182), likewise ratified by Zambia, which provides in Article 3(a) that the worst forms of child labour include "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour". The Committee is of the view that this problem may be examined more specifically under Convention No. 182, which requires ratifying States 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 is also addressing a request on certain other points 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, Angola, Antigua and Barbuda, Australia, Azerbaijan, Bahamas, Bahrain, Belgium, Belize, Benin, Brazil, Burundi, Cameroon, Cape Verde, Chile, China: Hong Kong Special Administrative Region, Macau Special Administrative Region, Colombia, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Denmark, Dominica, Egypt, El Salvador, Equatorial Guinea, Ethiopia, France: French Polynesia, Ghana, Guinea, Guinea-Bissau, Iceland, India, Islamic Republic of Iran, Italy, Kazakhstan, Kiribati, Lao People's Democratic Republic, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malawi, Malaysia, Mali, Mauritania, Republic of Moldova, Netherlands, Netherlands: Aruba, Niger, Nigeria, Oman, Papua New Guinea, Poland, Romania, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Senegal, Solomon Islands, South Africa, Sri Lanka, Switzerland, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, Togo, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United Kingdom: Anguilla, Montserrat, St. Helena, Uzbekistan, Yemen, Zambia); **Convention No. 105** (Albania, Algeria, Angola, Azerbaijan, Bahrain, Barbados, Belize, Benin, Bolivia, Burundi, Cambodia, Chile, China: Macau Special Administrative Region, Congo, Cuba, Democratic Republic of the Congo, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial

*Guinea, Fiji, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Hungary, India, Indonesia, Israel, Italy, Kazakhstan, Kiribati, Latvia, Lebanon, Lesotho, Malawi, Mali, Mauritania, Republic of Moldova, Netherlands: Aruba, Niger, Pakistan, Philippines, Romania, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Senegal, Serbia, Seychelles, Sri Lanka, Sudan, United Republic of Tanzania, Togo, Turkey, Ukraine, United Kingdom, Uzbekistan, Yemen).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 29** (*New Zealand: Tokelau, San Marino, Singapore, Slovenia, Spain*); **Convention No. 105** (*Lithuania, Saudi Arabia*).

## Elimination of Child Labour and Protection of Children and Young Persons

### Algeria

#### Minimum Age Convention, 1973 (No. 138) (ratification: 1984)

The Committee notes the information supplied by the Government in its report. *It requests the Government to provide information on the following points.*

*Article 1 of the Convention. National policy.* Referring to its previous comments, the Committee takes due note of the Government's information on the measures which it has taken since 2003 concerning child labour, particularly activities to raise public awareness of the problem. The Committee also notes that, in the context of the draft national strategy on children's affairs, the administration responsible for family matters organized a strategic planning workshop on child protection in February 2007 in collaboration with UNICEF and that, following the workshop, recommendations on child protection have been formulated for the 2007–15 period. Moreover, it notes that the Government has initiated a draft act on child protection. *The Committee asks the Government to supply information on the implementation of recommendations taken further to the strategic planning workshop on child protection held in February 2007 and also on the results obtained in terms of the progressive abolition of child labour. It also asks it to send a copy of the act on child protection once it is adopted.*

*Article 2, paragraph 1. Scope of application.* In its previous comments, the Committee noted that section 1 of Act No. 90-11 of 21 April 1990 concerning conditions of work governs individual and collective employment relations between salaried employees and employers. It noted that the terms of this provision of Act No. 90-11 do not apply to employment relations which are not governed by a contract, such as work done by children on their own account. The Committee also noted the Government's statement that Act No. 90-11 of 21 April 1990 does not apply to self-employed persons, as they are governed by other regulations which determine the minimum age for admission to non-wage work. The Committee therefore requested the Government to send copies of these regulations.

In its report, the Government indicates that section 5 of Order No. 75-59 of 26 September 1975 concerning the Commercial Code provides that any emancipated minor of either sex, aged 18 or above, who wishes to engage in commercial activity may not commence commercial operations or be considered of majority age with regard to commitments he enters into for commercial purposes if he has not received prior authorization from his father or mother or, failing that, through an official statement from the family council approved by a court of law. The Government also indicates that, according to this provision, regulations concerning admission to employment are of a general nature and apply to all forms of employment, whether waged or on one's own account.

The Committee notes that this provision of the Commercial Code concerns emancipated minors of either sex, aged 18 or above, who wish to engage in a commercial activity, whereas the situation to which the Committee refers concerns children under 18 years of age covered by the Convention who are engaged in economic activity outside an employment relationship in the informal sector or on their own account. It therefore again reminds the Government that the Convention applies to all sectors of economic activity and covers all forms of employment or work, whether or not a contractual employment relationship exists and whether or not the work is paid. *The Committee therefore urges the Government to take the necessary measures to ensure that the protection afforded by the Convention is applied to children who are engaged in economic activity on their own account. It asks the Government to supply information in this respect.*

*Article 3, paragraphs 1 and 2. Minimum age for admission to hazardous work and determination of these types of work.* Referring to its previous comments, the Committee notes the Government's information that revision of the national labour legislation is in progress and that the issue of persons under 18 years of age being prohibited from employment in hazardous work will be taken into account. It also notes the Government's information that a list of types of prohibited work will be established by means of regulation. In this respect, the Committee reminds the Government that *Article 3, paragraph 2*, of the Convention provides that, when types of hazardous work are being determined, the employers' and workers' organizations concerned must be consulted. *The Committee hopes that the revision of the national legislation will be completed soon and that provisions giving full effect to Article 3, paragraphs 1 and 2, of the Convention will be adopted as soon as possible. It asks the Government to supply information on all further developments in this respect.*

*Part V of the report form. Application of the Convention in practice.* The Committee notes the statistical information sent by the Government, particularly concerning the number of violations reported concerning non-compliance with the legal age for admission to employment (106) and concerning the absence of authorization from the father or legal guardian in the case of working minors (82). *The Committee asks the Government to supply information on the penalties imposed by the competent courts further to the reported violations. It also asks the Government to continue to supply information on the way in which the Convention is applied in practice, by providing, for example, statistical data concerning the employment of children and young people, extracts of reports from the inspection services and details of the number and nature of violations recorded and penalties imposed.*

## Antigua and Barbuda

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1983)**

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. Minimum age for admission to employment or work.* In its previous comments, the Committee drew the Government's attention to the fact that the provisions of the national legislation respecting the minimum age for admission to employment or work were not in conformity with the age specified by the Government when ratifying the Convention. Indeed, although the Government had specified the minimum age of 16 years when ratifying the Convention, section E3 of the Labour Code provides that no child shall be employed or shall work in a public or private agricultural or industrial undertaking or in any branch thereof, or on any ship, while the term "child", by virtue of section E2 of the Labour Code, means a person under the age of 14 years. The Committee had noted on several occasions that amendments to the Labour Code of 1975 were under examination with a view to bringing the minimum age for admission to employment or work into conformity with the minimum age specified when ratifying the Convention and with the compulsory school leaving age which, under section 43(1) of the Education Act of 1973, is 16 years of age. The Committee noted that in its most recent report, the Government indicated that the Labour Code was presently under review and that the comments of the Committee would be taken into account. **The Committee therefore once again requests the Government to take the necessary measures to amend section E2 of the Labour Code, so as to define a child as a person under the age of 16 years, which would bring the minimum age for admission to employment or work in the national legislation into conformity with the minimum age specified by the Government when ratifying the Convention. It requests the Government to inform it of progress made in amending the Labour Code.**

*Article 3, paragraphs 1 and 2. Minimum age for admission to, and determination of, hazardous work.* The Committee reminded the Government that *Article 3, paragraph 1*, of the Convention provides that the minimum age for admission to any type of employment or work, which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years. It also reminded the Government that, under the terms of *Article 3, paragraph 2*, of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. The Committee noted the Government's indication that the Labour Code was presently under review and that the comments of the Committee would be taken into account. **The Committee requests the Government to provide information regarding progress towards the adoption of the amendments to the Labour Code, which would contain a list of activities and occupations to be prohibited to persons below 18 years of age, in accordance with Article 3, paragraphs 1 and 2, of the Convention. It also requests the Government to provide information on the consultations held with organizations of employers and workers concerned on this subject. Finally, the Committee asks the Government to provide a copy of the amendments to the Labour Code once they have been adopted.**

*Article 4, paragraph 2. Exclusion of limited categories of employment or work.* The Committee had previously noted that section E3 of the Labour Code provides that the prohibition upon the employment or work of children, that is persons under the age of 14 years (section E2), does not apply to any undertaking or ship on which only members of the same family are employed, to members of a recognized youth organization who are engaged collectively in such employment for the purposes of fund-raising for such organization, nor to a child who is working together with adult members of his or her family on the same work and at the same time and place. **It once again requests the Government to indicate in future reports any changes in law and practice in respect of these categories excluded.**

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

## Bangladesh

### **Minimum Age (Industry) Convention (Revised), 1937 (No. 59) (ratification: 1972)**

The Committee notes the Government's report.

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee had noted the Government's information on the continued efforts to eliminate child labour from the garment factories of the members of the Bangladesh Garment Manufacturers and Exporters Association (BGMEA). It had also noted that, according to the Government's report to the Committee on the Rights of the Child of 4 February 1997 (CRC/C/3/Add.38 and CRC/C/3/Add.49), the number of child workers is significant in literally hundreds of occupations, and that in some cases children are subject to severe exploitation and physical and psychological hazards. In the same report, the Government recognized the need for action to remove children urgently from hazardous and unhealthy work and to reduce child labour progressively by expanding primary schooling and providing support to poor families (CRC/C/3/Add.49, paragraph 37). The Committee had requested the Government to indicate all measures taken to ensure the application of the Convention in practice, as well as the results achieved, including the number of children effectively removed from the work done in contravention of the minimum age provisions.

The Committee notes the absence of information on this point in the Government's report. It notes, however, that, according to the Government's report to the Committee on the Rights of the Child of 14 March 2003 (CRC/C/65/Add.22, paragraph 346), the Memorandum of Understanding (MOU) signed by the BGMEA, the ILO and UNICEF has led to the withdrawal of more than 27,000 children from work. It also notes that, according to the same source (paragraph 348), the national household survey on child labour conducted by the Bangladesh Bureau of Statistics in 1995–96 showed that 90 per cent of child workers aged 5 to 14 years operate in the informal sector.

The Committee notes that, according to the Baseline survey on child workers in welding establishments, conducted by the Bangladesh Bureau of Statistics in December 2003, with regard to the 39,000 children working in welding establishments, 52 per cent had never been to school and 95.6 per cent were not studying at the time the survey was conducted. Similar records exist for children working in the battery recharging/recycling sector (“Baseline survey on child workers in the battery recharging/recycling sector”, Bangladesh Bureau of Statistics, February 2004, page 57) and for children working in automobile establishments (“Baseline survey on child workers in automobile establishments”, Bangladesh Bureau of Statistics, November 2003, page 81).

The Committee observes that, according to the abovementioned statistical data, practice is inconsistent with the legislation and the Convention. It notes that an ILO/IPEC project is currently being implemented targeting hazardous child labour (in particular in *bidi* (hand-rolled cigarette) factories, construction, leather tanneries, matches) and child labour in the urban informal sector. It also notes that a programme has been launched on 24 April 2006 in cooperation with ILO/IPEC to provide vocational skills training for 300 children withdrawn from hazardous work.

***Recalling that the Convention sets forth the minimum age of 15 years for any public or private undertaking, with the exception of family undertakings and work done in technical schools, the Committee strongly encourages the Government to redouble its efforts to improve the situation. It once again requests the Government to supply statistical information on the practical application of the Convention, such as extracts from the reports of inspection services and information on the number and nature of contraventions reported, school enrolment or attendance rates, not only with regard to garment manufacturing but also other sectors covered by the Convention.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government’s report. ***It requests the Government to provide information on the following points.***

*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 sections 5(1) and 6(1) of the Suppression of Violence against Women and Children Act (hereinafter SVWCA) prohibit the sale and trafficking of women (irrespective of their age) and children for purposes of prostitution or immoral acts. It had noted that, by virtue of section 2(k) of the SVWCA, a “child” means a person *under 14 years* of age. It had observed, consequently, that the sale and trafficking of boys aged *14 years* or above is not prohibited under the SVWCA.

The Committee notes the Government’s statement that the SVWCA was amended in 2003. By virtue of this amendment, the age of a “child” as defined in section 2(k) has been increased to *16 years*. The Committee observes that the SVWCA, as amended in 2003, does not prohibit the sale and trafficking of boys between *16 and 18 years* of age. In this regard, it once again reminds the Government that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of both boys and girls *under 18* is prohibited and that, under *Article 1* of the Convention, immediate and effective measures to prohibit this worst form of child labour must be taken as a matter of urgency. ***The Committee accordingly requests the Government to take the necessary steps to amend the SVWCA in order to ensure that the sale and trafficking of all children under 18 years of age is prohibited.***

*Article 5. Monitoring mechanisms.* The Committee had previously noted that the Anti-Trafficking Unit, established within the Ministry of Home Affairs, and the Criminal Investigation Department (CID) deal with child trafficking issues. It notes the Government’s information that the police and other law enforcement agencies, as well as local governmental organizations are involved in the fight against trafficking. It further notes that, according to the information available at the Office, although a lack of resources hinders investigations, Bangladesh has expanded anti-trafficking police units to every district to encourage victims to testify against traffickers and to compile data on trafficking. According to the same information, in response to inadequately trained police and prosecutors, the Government has worked with legal experts to provide specialized training to prosecutors and with the International Organization for Migration (IOM) to develop a trafficking course for the national police academy and for immigration officials. ***The Committee requests the Government to provide full information, including statistics, on the findings and activities of the police, the Anti-Child Trafficking Unit and the CID regarding cases of trafficking involving children under 18 years.***

*Article 6. Programmes of action to eliminate the worst forms of child labour.* In its previous comments, the Committee had noted the International Trade Union Confederation’s (ITUC) indication that women and children are trafficked from Bangladesh to India, Pakistan and countries in the Middle East where they are forced to work as prostitutes, factory workers or camel jockeys. In particular, girls are lured into forced labour through promises of marriage and taken to cities such as Calcutta, Mumbai and Karachi where they are forced into prostitution. Boys are more likely to be taken to work as camel jockeys in the United Arab Emirates or other Gulf States. The Committee had also noted that the Government has adopted a number of programmes in order to raise people’s awareness and to prevent the trafficking of children. It had also noted that the two-year Subregional Programme to Combat the Trafficking in Children for Sexual and Exploitative Employment (TICSA) in Bangladesh, Nepal and Sri Lanka was renewed in 2002 and expanded to Pakistan, Thailand and Indonesia.

The Committee notes the Government’s statement that actually trafficking in children and women has emerged as an issue of major global concern, particularly in Asia. Several international events have called for immediate action to end trafficking. It notes the Government’s information that it has enacted different laws and adopted various developmental

projects in collaboration with international agencies in order to prevent trafficking, especially through advocacy programmes, workshops and public awareness campaigns. It also notes that, according to the Government, the TICSА project in Bangladesh achieved considerable success in the field, especially in the advocacy and awareness-raising of people in the border areas. The Committee further notes the Government's information that a National Plan of Action against the sexual abuse and exploitation of children, including trafficking, was adopted for the period 2001–06 (NPA 2006). Moreover, the Ministry of Home Affairs has adopted a project for preventing trafficking in children and women. The Committee finally notes the Government's statement that the rate of trafficking in children and women has reduced considerably because of the measures adopted and the enforcement of the provisions of laws.

The Committee welcomes the measures adopted by the Government. However, it observes that, notwithstanding these measures, the trafficking of children for labour and sexual exploitation still remains an issue of concern in practice. ***The Committee encourages the Government to redouble its efforts to eliminate the trafficking of children under 18 years for labour and sexual exploitation and to provide information on progress made. It also requests the Government to provide information on the concrete results achieved under the TICSА (Phase II), the NPA 2006, and the project for preventing trafficking in children and women adopted by the Ministry of Home Affairs.***

*Article 7, paragraph 1. Penalties.* The Committee had previously noted that section 6(1) of the SVWCA provides for sufficiently effective and dissuasive penalties of imprisonment and fines for the sale and trafficking of children. It notes the Government's information that there are at least 33 tribunals where special judges are appointed to deal with cases of trafficking. Severe punishments have had a deterrent effect in the matter. It also notes that, according to the information available at the Office, Bangladesh sustained efforts to punish traffickers in 2005, prosecuting 87 cases and convicting 36 traffickers. However, despite successes, public corruption is still widespread and the court system is slow. In addition, traffickers are often charged with lesser crimes such as crossing borders without proper documentation. ***While welcoming the Government's efforts to punish perpetrators of trafficking, the Committee encourages the Government to redouble its efforts to ensure that persons who traffic in children are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. In this regard, it requests the Government to provide information on the number and nature of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.***

*Article 7, paragraph 2. Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Child domestic workers.* In its previous comments, the Committee had noted that, according to the World Confederation of Labour (WCL), child domestics worked in conditions that resemble servitude. It had noted the Government's statement in reply to the comments made by the WCL, that forced labour is prohibited by virtue of article 34 of the Constitution and that child domestics were usually well-treated and were not subject to forced or bonded labour. The Government had also indicated that several programmes, such as the ***Time-bound programme (TBP)*** adopted in June 2004 by the Government and ILO/IPEC, were in progress to prevent and eliminate the worst forms of child labour, including domestic work. The Committee had nevertheless noted that, in Dhaka City alone, there were an estimated 300,000 child domestic workers. Moreover, according to the Government, some child domestic workers rarely have access to education and they do not get wages or proper food and clothing.

The Committee notes the Government's information that the recent study conducted by the ILO in 2006 on the conditions of domestic servants in Bangladesh under the ***TBP*** reveals that more than 90 per cent of domestic servants expressed satisfaction with their jobs and employers and did not want to leave their jobs. Less than 10 per cent of domestic servants indicated that their employers did not behave well. Finally, a negligible percentage of domestic servants expressed that they were abused or punished for any mistake or loss. The Committee notes the Government's statement that in Bangladesh child domestic workers cannot be considered as being involved in the worst forms of child labour. They are provided with food, shelter, medical facilities, and clothes, in addition to monthly wages. Besides, parents feel secure in keeping their children for domestic work in some houses. According to the Government, even if there are a very negligible number of cases where domestic servants are abused or are victims of corporal punishments, such cases cannot be generalized. The Committee takes due note of this information. It nevertheless considers that child domestic workers often fall prey to exploitation, which can take various forms, and that it is difficult to oversee their employment conditions because the work is illegal. ***It accordingly urges the Government to continue taking measures to protect child domestic workers from the worst forms of child labour.***

The Committee is also addressing a request directly to the Government concerning other points.

## Bolivia

### ***Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1973)***

The Committee notes with regret that for the second consecutive year 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. 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, paragraph 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 requests the Government to provide information on the progress achieved in this connection and, on the establishment of thorough medical examination before admission to employment.**

With regard to the frequency of the periodical medical examinations (*Article 3, paragraphs 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 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 requests it to continue providing information on the progress achieved in the application of the Convention in practice in the country. The Committee also 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 asks the Government to include provisions in the above draft relating to the intervals at which medical examinations shall be carried out (Article 3, paragraph 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 with regret that for the second consecutive year the Government's report has not been received. It must therefore 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.**

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1997)**

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

*Article 6 of the Convention. Apprenticeship.* In its previous comments, the Committee noted that under sections 28 and 58 of the General Labour Act, children under 14 years of age may work as apprentices with or without pay. According to section 28 of the Act, an apprenticeship contract is a contract under which the employer undertakes to ensure that apprentices receive practical instruction in a trade or craft which the employer or some other person dispenses using the work of apprentices, whether or not remunerated, for a fixed period which may not exceed two years. The provision includes apprenticeships in commerce and

activities involving the use of engine-driven machinery. Section 58 of the Act prohibits work by children under 14 years of age other than in apprenticeships.

The Committee noted that, according to the Government, apprenticeship is covered by special legislation on work done by girls, boys and adolescents, namely the Children's and Adolescents' Code, 1999. In this regard, the Committee observed that sections 137 and 138 of the 1999 Code deal with apprenticeship. Section 137 provides for an apprenticeship system, and section 138 defines apprenticeship as vocational training provided through an educational process and a specific trade, in accordance with a programme, under the management of an official and carried out in a suitable environment. The Committee observed that sections 137 and 138 on apprenticeship specify no minimum age for admission to apprenticeship. It reminded the Government that *Article 6* of the Convention allows work by persons of at least 14 years of age in undertakings, where such work is part of an apprenticeship course. ***The Committee requests the Government to provide information on the measures taken or envisaged to ensure that no one under the age of 14 years is engaged in an apprenticeship. It again requests the Government to provide information on the practical implementation of apprenticeship programmes.***

The Committee raises 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.***

## Brazil

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2001)***

The Committee notes the detailed information provided by the Government in its report. In particular, it notes that a number of the provisions of the national legislation regulating child labour have been amended.

*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) had drawn up a National Plan for the Prevention and Eradication of Child Labour and it requested the Government to provide a copy of the Plan and the results achieved through its implementation. The Committee notes the information provided by the Government that the CONAETI is currently examining the reports of the organizations and agencies that are engaged in the implementation of the National Plan for the Prevention and Eradication of Child Labour. Once the analysis has been completed, the results will be transmitted to the Office.

The Committee noted previously that a ***Time-bound Programme (TBP)*** had been launched in October 2003 and would contribute to the development of programmes and activities essential for the establishment of the conditions required for the elimination of child labour in Brazil, including its worst forms. The Committee also noted that several action programmes targeting hazardous agricultural activities (particularly household agricultural activities), work in the informal economy and child domestic labour were to be implemented. In this respect, the Committee notes that, according to the ILO/IPEC evaluation reports, activities have been organized to raise the awareness of the population concerning child labour and its worst forms, education projects have been established and legislative measures adopted in relation to the most vulnerable children and young persons.

In relation to statistical data, the Committee noted previously that, while statistics showed that child labour had fallen between 1992 and 2001, the application of the legislation on child labour appeared to be encountering difficulties and child labour remained a problem in practice. The Committee expressed serious concern over the situation of children under 16 years of age who were compelled to work. It requested the Government to provide information on the measures taken since 2002 to harmonize progressively the de facto situation and the law. In this respect, the Committee notes with interest the statistical data provided by the Government in its report, which are based on the household survey carried out by the Brazilian Institute of Geography and Statistics (IBGE) in 2004. It notes that 5.4 million children and young persons between 5 and 17 years of age worked during the reference week. Of this number, over 4.5 per cent were aged between 5 and 9 years and over 34.4 per cent were between 10 and 14 years of age. Furthermore, the statistics show that between 2002 and 2004 the number of children between 5 and 9 years of age engaged in work fell by over 54,700. With regard to young persons between 10 and 15 years of age engaged in work, the number fell by around 311,000 and the number of young persons of the same age seeking work also fell by 380,000. Finally, with regard to young persons aged 15 years, the number also fell by over 83,000. In total, the number of children engaged in work between the ages of 5 and 16 years fell by around 450,000.

In its report, the Government indicates that the minimum age for admission to employment or work has been raised from 14 to 16 years. It adds that, although it is desirable for these children only to attend school instead of working, particularly for reasons of family necessity and delays in their studies, the possibility that children are engaged in work has to be taken into consideration. The majority of children and young persons who work do so in family enterprises, where it is very difficult for inspectors to fulfil their mission. According to the survey referred to above, in the case of children between 5 and 9 years of age, around 70 per cent of them are not paid when they perform work in the family enterprise for the subsistence of the family. However, according to the Government, this has to be seen in the context that around 5 per cent of these children do not attend school. The Government adds that since 2006 children have to be admitted to school from the age of 6 and attend school up to the age of 15 years. With regard to young persons between 10 and 14 years of age, they mainly work in family enterprises or in production activities for their own consumption. The Government also indicates that efforts have to be made in the field of education.

The Committee notes with interest the efforts made by the Government to combat child labour and strongly encourages it to pursue its efforts with a view to progressively improving the situation. *The Committee requests the Government to continue providing detailed information on the manner in which the Convention is applied in practice, including, for example, statistical data disaggregated by sex and age on the nature, extent and trends in child labour and work by young persons under the minimum age specified by the Government when ratifying the Convention or in hazardous work, together with extracts of the reports of the inspection services. It further requests the Government to provide information on the measures taken for the implementation of the various action programmes established in the context of the TBP, with particular reference to measures to combat child labour, and the results achieved. Finally, it requests the Government to provide the results of the study undertaken in the context of the National Plan for the Prevention and Eradication of Child Labour when it has been completed.*

The Committee is also addressing a request directly to the Government on other specific points.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the Government's report. It also notes the communication from the International Trade Union Confederation (ITUC) of 30 August 2006 concerning certain allegations of non-compliance with the Convention. A copy of this communication was transmitted to the Government on 28 September 2006 so that it could comment. Moreover, the Committee notes the information provided by the Government that, in the process of bringing the national legislation into conformity with Conventions Nos 138 and 182, a special subcommittee has been established to examine the shortcomings of the national legislation. *The Committee hopes that the Government will submit to the special subcommittee the various issues raised below and in its direct request. It requests the Government to provide information on any new development in this respect.*

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children for economic and sexual exploitation.* In its previous comments, the Committee noted that section 228 of the Penal Code made it an offence to induce, facilitate or promote the prostitution of any person. It also noted that sections 206 and 207 of the Penal Code prohibit the sale and trafficking of children for economic exploitation. However, the Committee emphasized that section 231 of the Penal Code applies to the international trafficking of women for prostitution, without including other elements of trafficking, such as the international trafficking of boys or the internal trafficking of both girls and boys. The Committee also noted that, according to the report entitled "Good practices in action against child labour: Ten years of IPEC in Brazil", published by ILO/IPEC–Brazil in 2003, the sexual exploitation of children and young persons is an increasing phenomenon. It was estimated in that document that around 500,000 children between 9 and 17 years of age are sexually exploited in the country. The Committee expressed serious concern at the number of children in Brazil who are sexually exploited for commercial purposes.

The Committee notes with satisfaction the adoption of Act No. 11.106 of 28 March 2005 amending Title VI, Chapter V, of the Penal Code relating to the procuring and the trafficking of persons. In particular, it notes that under section 231 of the Penal Code, as amended by Act No. 11.106 of 28 March 2005, the international trafficking of persons is prohibited and that, under new section 231-A of the Penal Code, the internal trafficking of persons is also prohibited. However, the Committee notes that, according to the activity reports of ILO/IPEC in 2006 on the project to combat the trafficking of persons, Brazil is a country of transit, origin and destination of child victims of international sale and trafficking for prostitution. Girls and boys are also victims of internal trafficking, particularly for exploitation in agricultural work, mines and charcoal production. *In view of the above, the Committee greatly appreciates the amendments made to the Penal Code and requests the Government to renew its efforts to ensure the protection in practice of children under 18 years of age against sale and trafficking for economic and sexual exploitation. In this respect, it requests the Government to provide information on the application of the provisions covering this worst form of child labour, including statistics on the number and nature of the violations reported, investigations, prosecutions, convictions and the penal sanctions applied.*

*Article 6, paragraph 1. Programmes of action. 1. National Plan.* With reference to its previous comments, in which it noted the National Plan to Combat Sexual Violence against Children and Young Persons, the Committee notes that the Plan is currently under examination with a view to being updated. *It requests the Government to provide information on the results achieved in terms of the elimination of this worst form of child labour following the implementation of the National Plan. The Committee also requests it to provide a copy of the new Plan.*

*2. Project to combat trafficking in persons in Brazil.* The Committee notes that, according to the ILO/IPEC activity reports of 2006 on the Project to combat trafficking in persons in Brazil, a Plan of Action to Combat Trafficking in Persons has been formulated and projects will subsequently be implemented. *The Committee requests the Government to provide information on the implementation of the Plan of Action and the projects that are developed, as well as on the results achieved in terms of the elimination of the sale and trafficking of young persons under 18 years of age for economic and sexual exploitation.*

*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. 1. Time-bound programme (TBP).* The Committee previously noted that, since September 2003, the Government has been participating in the ILO/IPEC TBP on

the worst forms of child labour, implemented in the states of Maranhão, Paraíba, Rio de Janeiro, Sao Paulo and Rio Grande do Sul. One of the worst forms of child labour covered by the **TBP** is the commercial sexual exploitation of children. The Committee notes with interest that, according to the ILO/IPEC activities reports for 2006 on the **TBP**, the objectives of the projects to prevent children from being engaged in the worst forms of child labour and remove them from these forms of child labour have been achieved. It also notes that new projects are being implemented. The Committee further notes that monitoring programmes of the commercial sexual exploitation of children currently cover over 1,100 Brazilian municipalities and target 97,000 children. The Committee also takes due note of the fact that social assistance centres have been established to provide psychological and social support for children and young persons who are victims of sexual exploitation. **The Committee requests the Government to continue its efforts and to provide information on: (1) the number of young persons under 18 years of age who have been prevented from being engaged in commercial sexual exploitation; and (2) the number of children who are in practice removed from this worst form of child labour and the rehabilitation and social integration measures taken for these children.**

2. *Other measures.* The Committee notes that, according to the ILO/IPEC activity reports for 2006 on the Project to combat trafficking in persons in Brazil, it has been demonstrated that, following police patrols to sites where it is the easiest to transfer the victims of trafficking, it was necessary to train the police services in relation to this problem. It further notes that awareness-raising measures have been taken for the service providers directly related to the tourism industry. The Committee also notes that awareness-raising activities for MERCOSUR countries and meetings with experts from other countries faced with the problems of the sale and trafficking of children for sexual exploitation and work as domestic servants have been held with a view to exchanging information on these problems and sharing experience. The Committee considers that collaboration and the exchange of information between the various actors at the national and international levels concerned, such as governmental organizations, employers' and workers' organizations, non-governmental organizations and other civil society organizations, are essential to prevent and eliminate commercial sexual exploitation. **The Committee requests the Government to continue its efforts of collaboration and to provide information on the results obtained.**

*Clause (d). Children at special risk. Child domestic workers.* In its communication, the ITUC indicates that, according to an ILO/IPEC study of 2004, there are over 500,000 child domestic workers in Brazil. A significant number are extremely vulnerable to exploitation and forced labour and work under conditions prohibited by Convention No. 182. According to the ILO/IPEC study of 2004, these children do not attend school, particularly in the case of girls, whose school attendance rate is very low: some 28 per cent had had no formal education, 58 per cent had only received primary education, and only 10 per cent had secondary education. Although in Brazil the minimum age for admission to employment or work is 16 years, over 88 per cent of child domestic workers begin working before that age, usually at around 5 or 6 years of age. Certain children say that they do not receive payment and others that they do not have a day off during the week. In its communication, the ITUC adds that although the national legislation contains provisions applicable to child domestic labour, a clear legal framework would be necessary to end this form of exploitation of children. The ITUC points out that the fact that these children work in private houses, where it is difficult to monitor them, means that it is important to change public attitudes to child domestic work. This implies that the Government should consider taking preventive measures, including economic alternatives, to encourage families to send their children to school.

The Committee notes the information provided by the Government in its report to the effect that the characteristics of domestic work prevent the labour inspection services from carrying out inspections directly in houses. Labour inspectors do not have any legal powers to report violations of the laws as the Labour Code does not apply to this category of workers. The Committee notes that, according to the ILO/IPEC activity reports of 2006 on the **TBP**, an Act establishing the rights of domestic workers was adopted in 2006. Furthermore, that same year, Bill No. 5767 prohibiting the engagement of children under 16 years of age as domestic workers was submitted to the National Congress. The Committee further notes that discussions have been held on the inclusion of this form of child labour on the list of activities considered to be hazardous. Finally, it notes that child domestic work is one of the forms of child labour targeted by the **TBP** and that measures are being taken in the context of the implementation of the programme to combat this problem. **Noting that children engaged in domestic work are often the victims of exploitation, which takes on very different forms, the Committee requests the Government to provide information on the measures adopted in the context of the implementation of the TBP to protect these children against the worst forms of child labour.**

The Committee is also addressing a request directly to the Government on certain other specific points.

## Burkina Faso

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's reports.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee noted concordant information from various sources to the effect that the cases of trafficking of children for the exploitation of their labour, particularly in agriculture, concern a substantial number of children in Burkina Faso. It also noted that Act No. 038-2003/AN of 27 May 2003, defining and repressing the trafficking

of children, prohibits and penalizes the trafficking of children, and requested the Government to provide information on the application of this Act in practice.

The Committee notes that, according to the UNICEF report on trafficking in persons, especially women and children, in West and Central Africa, published in 2006, children from Burkina Faso are the victims of trafficking in the following countries: Benin, Côte d'Ivoire, Gambia, Ghana, Mali, Niger, Nigeria, Togo, and also of trafficking to Europe. It also notes that, according to ILO/IPEC information, internal trafficking accounts for 70 per cent of cases and principally concerns girls who work as servants or as itinerant traders in the streets of the country's major cities. Cross-border trafficking of Burkinabé children is mainly with Côte d'Ivoire, even though new patterns of migration and trafficking have emerged with other countries of the region as destinations. Boys tend more to look for work in agriculture in neighbouring countries, in cotton, coffee or cocoa plantations. The Committee also notes that, according to the UNICEF report on the trafficking of persons, *talibé* children from Burkina Faso are exploited for begging in cities in the Gambia and also in rice fields in Mali.

The Committee notes with interest the Government's information to the effect that, since the adoption and implementation of Act No. 038-2003/AN of 27 May 2003 defining and repressing the trafficking of children, 31 cases of trafficking have been prosecuted in the 19 higher courts and 18 persons have been sentenced to terms of imprisonment ranging from one to three years. Moreover, it notes the Government's information on the recent cases of cross-border trafficking concerning children from Burkina Faso, Côte d'Ivoire, Mali and Nigeria. The Committee observes that, although the Government has adopted a number of measures to combat the sale and trafficking of children for the exploitation of their labour, the problem still exists in practice. ***It encourages the Government to continue its efforts to ensure the protection in practice of children under 18 years of age against the sale and trafficking of children for the purpose of labour exploitation. It requests the Government to continue providing information on the practical application of Act No. 038-2003/AN of 27 May 2003 defining and repressing the trafficking of children, in particular by supplying statistics on the number and nature of violations reported, investigations, prosecutions, convictions and penal sanctions.***

*Article 5. Monitoring mechanisms. 1. Vigilance and supervision committees.* In its previous comments, the Committee requested the Government to provide information on the activities of the vigilance and supervision committees. In this regard, the Committee notes that, according to the information in the activity report of ILO/IPEC on the LUTRENA programme combating trafficking in children for labour exploitation in West and Central Africa, the work done by the vigilance and supervision committees since 2002 has resulted in the interception of approximately 620 children from Burkina Faso involved in trafficking and in an information campaign for more than 3,600 members of various communities in the country, including 700 girls and 1,900 boys. ***The Committee encourages the Government to do its utmost to facilitate the work of these committees.***

*2. Child labour unit.* The Committee notes that, according to the information in the ILO/IPEC activity report on the LUTRENA programme, a child labour unit has been set up. ***It requests the Government to supply information on the working of this unit by supplying reports on its activities.***

*Article 7, paragraph 2. Effective and time-bound measures.* The Committee notes with interest that more than 26,730 children have benefited from the LUTRENA programme since it was launched in 2001. Of these, 14,790 children were removed from this worst form of child labour and 11,940 were prevented from being involved in it. It also notes that, between September 2006 and March 2007, some 92 child victims of trafficking were withdrawn from this worst form of child labour and received educational or training services.

*Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assisting the removal of children from these worst forms. 1. Trafficking of children.* Referring to its previous comments, the Committee takes due note of the information provided by the Government in its report concerning the implementation of the LUTRENA programme in the country. It notes in particular that, in the context of this programme, training activities with regard to combating the trafficking of children have been undertaken with the social partners, labour inspectors and the general public, including children and their families; more than 632 children have benefited from the project and from educational support. ***The Committee requests the Government to continue to supply information on the measures taken in the context of the implementation of the LUTRENA programme to prevent young persons under 18 years of age from being victims of the sale or trafficking of children. In addition, it asks the Government to provide information on: (1) the number and location of reception centres which have been set up in the country to cater for child victims of trafficking; (2) programmes providing specific medico-social monitoring which have been drawn up and implemented for child victims of trafficking.***

*2. Project for small-scale gold mines in West Africa.* The Committee notes that Burkina Faso is participating in the ILO/IPEC project entitled "Prevention and elimination of child labour in artisanal gold mining in West Africa (2005–08)", in which Mali and Niger are also taking part. The specific objective of the project is to remove children from gold mines, while establishing structures to prevent child labour, and to support local activities, particularly those aimed at enhancing the safety and boosting the income of adults working in the mines. The Committee notes that, according to the information in the 2007 ILO/IPEC activity report on the project in small-scale gold mines, more than 240 children had been prevented from being employed in hazardous work in the gold mines and were receiving school education. ***The Committee requests the Government to provide information on the measures taken under the ILO/IPEC project in small-scale gold mines***

to: (a) prevent children from being engaged in hazardous work in the mines; and (b) provide the necessary and appropriate direct assistance for the removal of children from this worst form of child labour and to ensure their rehabilitation and social integration. The Committee also requests the Government to provide information on the results obtained.

*Clause (e). Taking account of the special situation of girls.* The Committee notes that, according to ILO/IPEC–LUTRENA information, internal trafficking, which accounts for 70 per cent of cases, mainly concerns girls who work as servants or as hawkers in the streets of the big cities in the country. It observes that girls, particularly those employed in domestic work, are often the victims of exploitation, which takes on very diverse forms, and it is difficult to monitor their conditions of employment because of the unauthorized nature of the work. **The Committee urges the Government to renew its efforts to protect girls, particularly against economic and sexual exploitation, and requests it to provide information on the measures taken in this regard in the context of the LUTRENA programme.**

*Article 8. International cooperation and assistance. 1. Regional cooperation.* Referring to its previous comments, the Committee notes that, apart from the bilateral cooperation agreement on the cross-border trafficking of children signed with Mali, Burkina Faso in 2005 signed the multilateral cooperation agreement on combating the trafficking of children in West Africa and in 2006, the Abuja multilateral cooperation agreement. With regard to the agreement between Mali and Burkina Faso, the Committee notes the Government's information to the effect that 22 Malian children have been intercepted and repatriated to Mali. **The Committee asks the Government to continue providing information on the implementation of the agreements and indicate whether the information exchanges with the other signatory countries have made it possible to: (1) apprehend and arrest persons operating in networks engaged in the trafficking of children; and (2) detect and intercept child victims of trafficking in the border areas.**

*2. Poverty elimination.* With reference to its previous comments, the Committee notes the draft Decent Work Country Programme for Burkina Faso. It notes that the problems connected with child labour form part of the priorities of this country programme, including child labour in rural areas and in mines, and that the Government intends to take measures aimed at eliminating child labour in the context of poverty reduction. **Noting that poverty reduction programmes contribute to breaking the poverty cycle, which is essential for the elimination of the worst forms of child labour, the Committee requests the Government to provide information on the measures taken in the context of implementation of the country programme to eliminate the worst forms of child labour, particularly as regards the actual reduction of poverty among child victims of sale and trafficking, of forced begging and also of hazardous work in mines and quarries.**

*Part III of the report form. Court decisions.* The Committee requested the Government to supply copies of court decisions further to the adoption of the Act of 27 May 2003 on the trafficking of children. In this respect, it notes the Government's indication that information would be sent subsequently to the Office. **In view of the information provided by the Government on the number of prosecutions and convictions since the adoption and implementation of Act No. 038-2003/AN of 27 May 2003 defining and repressing the trafficking of children, the Committee hopes that the Government will be able to supply copies of these court decisions in its next report.**

In addition, the Committee is raising a number of other points in a direct request to the Government.

## Burundi

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee notes the Government's report and the numerous documents attached.

*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 confirms that the country's regulations do 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 is to be discussed in a tripartite context on the occasion of the revision of the Labour Code and its implementing texts. The Committee reminds 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 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 takes due note of the information provided by the Government in its report with regard to the various measures adopted in the field of education. It notes 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 notes 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 will be constructed and other mobile and temporary schools will be established. Furthermore, coordination units for girls' education have been established and over 1,000 teachers recruited. *The Committee 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 also addressing a request directly to the Government on other specific points.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

The Committee notes the Government's first report. It also notes the comments made by the Confederation of Burundi Trade Unions (COSYBU), dated 30 August 2005, and the Government's reply. Furthermore, with reference to its comments under the Forced Labour Convention, 1930 (No. 29), concerning the recruitment of children for use in armed conflict and the commercial sexual exploitation of children and because the Worst Forms of Child Labour Convention, 1999 (No. 182), addresses these forms of child labour, the Committee considers that the comments under Convention No. 29 may be examined under Convention No. 182.

*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 notes 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 Rwasa (PALIPEHUTU/FNL) and that children continue to be enrolled. It also notes 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 adds 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 is being experienced over most of the national territory, it has 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 have been demobilized except those used by the armed movement FNL (*Front national de libération*) of Agathon Rwasa, which has not yet laid down its arms.

The Committee notes that, in his Report on Children and Armed Conflicts in Burundi of 27 October 2006 (S/2006/851), the United Nations Secretary-General indicates 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 adds 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 Rwasa'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 indicates that the implementation of the Comprehensive Ceasefire Agreement has remained stalled since its signature (paragraphs 1 and 2).

The Committee notes that, in the information provided under Convention No. 29, the Government indicates that the minimum age for enrolment in the armed forces of Burundi *has been increased from 16 to 18 years*. It also notes that, according to the information contained on the Internet site of the Special Representative of the Secretary-General for Children and Armed Conflict (<http://www.un.org/children/conflict/english/home6.html>), following her visit to the country, the Government of Burundi has made progress in the protection of children affected by conflict. In this respect, the Committee notes that the Penal Code has 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 requests the Government to take measures as a matter of great 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 notes 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 expresses 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 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 urges the Government to convict and impose sufficiently and dissuasive penalties 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 indicates that the extreme poverty of the population encourages parents to allow their children to engage in prostitution. In its report, the Government indicates 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 notes 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 indicates that more and more children are victims of sexual violence (paragraph 82). The Committee notes 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 notes 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 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 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 indicates 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 indicates 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 2 5). 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 requests the Government to take the necessary measures to protect street children and to establish the prohibition in the national legislation of their use, procuring or offering 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.* 1. *Child soldiers.* The Committee notes 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 notes 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 notes 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 notes 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 notes 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. Up to now, 1,932 children have been demobilized in the context of this programme.

The Committee notes 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 have been demobilized and are exposed to the risk of being recruited once again are monitored. The Committee encourages 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 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.***

2. *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 takes due 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 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 notes 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 notes 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 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 also raising other matters in a request addressed directly to the Government.

## Congo

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

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

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* In the observations that the Committee has been making for several years under Convention No. 29, it had noted the Government's information mentioning the existence of child trafficking between Benin and the Congo for the purpose of forcing the children to work in Pointe-Noire in trading (fixed and itinerant) and domestic work. According to the Government, the receiving families force the children to work in unimaginable conditions. They have to work all day and are subjected to all kinds of hardships. The Committee noted that section 345 of the Penal Code provides for penalties for individuals found guilty of kidnapping. It noted that section 354 of the Penal Code provides for penalties for those found guilty of having, by means of fraud or violence, kidnapped or ordered the kidnapping of juveniles, or taken, led or moved them from the places where they had been placed by the individuals to whose authority or direction they were subject or had been entrusted. Furthermore, under section 356(1) of the Penal Code, sanctions are to be imposed on anyone who, without fraud or violence, has kidnapped, led away or tried to kidnap or lead away, a juvenile under 18 years of age.

The Committee reminded the Government that under *Article 3(a)* of the Convention, the sale and trafficking of children is considered to be one of the worst forms of child labour. It also drew the Government's attention to the fact that pursuant to *Article 1* of the Convention, each member State which ratifies the Convention must take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour for a person under 18 years of age. ***The Committee requests that the Government indicate the extent to which sections 345, 354 and 356 of the Penal Code have been implemented in practice.***

*Article 7, paragraph 1. Penalties.* The Committee reminded the Government that under *Article 7, paragraph 1*, of the Convention, it must take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of penal sanctions. ***The Committee therefore requests that the Government adopt sanctions allowing for the prosecution of those involved in the sale or trafficking of children. In this regard, the Committee draws the Government's attention to the fact that sanctions of a sufficiently effective and dissuasive nature must be imposed. The Committee also requests that the Government provide information on the number and nature of reported infringements, the investigations carried out, legal proceedings, convictions and the sentences imposed.***

*Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and provide for their rehabilitation and social integration. Sale and trafficking of children.* In the observations that the Committee has been making for several years under Convention No. 29, it had noted the information provided by the Government in which it is acknowledged that the trafficking of children between Benin and the Congo for the purpose of forcing the children to work in Pointe-Noire in trading (fixed and itinerant) and domestic work is contrary to human rights. Consequently, the Government has taken certain measures to curb child trafficking, including the repatriation by the Consulate of Benin of children that have either been picked up by the national police or removed from certain families, and the current requirement at borders (airport) for juveniles (children under 18 years of age) to have administrative authorization to leave Beninese territory. ***The Committee requests that the Government provide information on the impact of the measures taken as regards the rehabilitation and social integration of children following their withdrawal from labour.***

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

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

## Costa Rica

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 1976)***

The Committee notes the information provided by the Government in its report. It notes in particular that the International Relations Commission is currently examining the Bill on the employment of young persons and the Bill prohibiting the performance of hazardous and unhealthy types of work by young workers. ***The Committee hopes that the examination of these Bills will result in their adoption and requests the Government to provide information on the progress made in the procedure relating to the two Bills and to provide copies once they have been adopted.***

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee noted the statistics contained in the national report on the results of the study on work by children and young persons in Costa Rica, published in June 2003 by the National Statistical and Census Institute (INEC) and the Ministry of Labour and Social Security (MTSS), in collaboration with ILO/IPEC and the Statistical Information and Monitoring Programme on Child Labour (SIMPOC), according to which around 113,500 girls and boys aged between 5 and 17 years worked in Costa Rica. Of this number, around 49,200 children under 15 years of age, which is below the minimum age for admission to employment or work, were engaged in work, or 43.4 per cent. The principal sector of economic activity affected by child labour is agriculture, including the harvesting of coffee, which is one of the major exports in Costa Rica. The other economic sectors affected by child labour are manufacturing, commerce and services, including domestic work. Moreover, over 45 per cent of children who do not attend school do so for reasons related to work. The Committee noted the measures adopted by the Government to combat child labour, but expressed concern that the statistics showed that difficulties appear to be encountered in the application of the legislation on child labour and that child labour is widespread in Costa Rica.

The Committee takes due note of the information provided by the Government in its report, including the measures to raise awareness among public officials of the problem of child labour and the intra- and inter-institutional protection protocols intended to improve communication between the various persons working in this field. The Committee notes with interest the adoption of the Second National Plan for the prevention and elimination of child labour and the special protection of young workers (2005–10), which addresses eight subjects in a transversal manner, including rights, gender, poverty, the risk or fact of social exclusion and the social and cultural environment. The Committee further notes that, following the compilation of the various types of information provided by the institutions constituting the National

Steering Committee, a report will be prepared on the progress achieved. However, it notes the statistics for 2005 of the National Directorate of Labour Inspection according to which 68 per cent of the 161 cases relating to minors working were concentrated in the central region. Furthermore, most children work in the commercial sector (33 per cent), services (27 per cent), industry (20 per cent) and the agricultural sector (15 per cent).

With reference to the Government's collaboration with ILO/IPEC, the Committee notes that Costa Rica is participating in the *Time-bound Programme (TBP)* on the worst forms of child labour and the Subregional Programme for the elimination of child labour. According to the activity reports of the *TBP*, the programme has directly benefited over 150 families and 1,100 children and indirectly over 113,000 children. With regard to the ILO/IPEC Subregional Programme on the prevention and elimination of child labour in the coffee industry, the Committee takes due note of the statistics provided by the Government. In this respect, it notes that, in the context of the Second National Plan, the Ministry of Agriculture will develop action to eliminate child labour in agriculture. Furthermore, according to the activity reports of the *TBP*, projects are being implemented to prevent the premature engagement of children in work. The Committee greatly appreciates the measures adopted by the Government for the abolition of child labour, and it considers that these measures are an affirmation of the political will to develop strategies to combat this problem. ***It therefore strongly encourages the Government to pursue its efforts to combat child labour and requests it to provide information on the implementation of the projects and the new National Plan referred to above, and on the results achieved in terms of the progressive abolition of child labour, particularly in the agricultural, industrial, commercial and service sectors. The Committee requests the Government to continue providing information on the manner in which the Convention is applied in practice, including statistical information disaggregated by sex on the nature and extent of work by children, extracts of the reports of the inspection services and information on the number and nature of the violations reported and the penalties imposed.***

*Article 2. Minimum age for admission to employment or work.* In its previous comments, the Committee noted a contradiction between, on the one hand, section 89 of the Labour Code, which established a minimum age for admission to employment of 12 years and, on the other, sections 78 and 92 of the Code of Children and Young Persons, which set this minimum age at 15 years, in accordance with the minimum age specified when the Convention was ratified. In this respect, the Government indicated that, despite the contradiction between the provisions of the Labour Code respecting the minimum age for admission to employment and work and those of the Code of Children and Young Persons, the applicable rule was contained in the latter. The Government added that it would convey to the competent authorities the suggestion made by the Committee of Experts that the provisions of the Labour Code should be harmonized with those of the Code of Children and Young Persons. In view of these statistics on child labour, the Committee considered that, to ensure the protection of children under 15 years of age who are engaged in work, the harmonization of the provisions of the Labour Code with those of the Code of Children and Young Persons is important.

In its report, the Government indicates that no draft legislation has been submitted to amend the Labour Code. However, in the legal system in Costa Rica, the principle that a standard contained in special legislation, in the present case the Code of Children and Young Persons, prevails over one contained in a general law, in this case the Labour Code, is applicable, as well as the principle that the most favourable provision and the most beneficial conditions have to be implemented. While taking due note of the Government's indications, the Committee considers it desirable, taking into account the statistics on work by children under 15 years of age in the country, for the provisions of the Labour Code to be harmonized with those of the Code of Children and Young Persons. ***It hopes that on the occasion of a revision of the labour legislation, and particularly of the Labour Code, the Government will take the necessary measures in this respect.***

## Democratic Republic of the Congo

### ***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). 1. Sale and trafficking of children for sexual exploitation.* With reference to its observations under Convention No. 29, the Committee noted that in its initial report to the Committee on the Rights of the Child in August 2000 (CRC/C/3/Add.57, paragraphs 68, 205 and 206), the Government indicated that phenomena such as the trafficking and sale of children for their sexual and commercial exploitation are increasingly widespread in the Democratic Republic of the Congo. Nevertheless, there is no in-depth study or statistics on the subject. The Government also indicated that the causes are mainly of an economic nature, but also of a social, family, political-legal and cultural nature. The Committee further noted that, in its concluding observations, of July 2001 (CRC/C/15/Add.153, paragraphs 68 and 69), the Committee on the Rights of the Child expressed concern at the information on the trading, trafficking, kidnapping and use for pornography of young girls and boys within the territory of the country, or from the Democratic Republic of the Congo to another country, and that it considered it to be of great concern that domestic legislation does not sufficiently protect children from trafficking. The Committee on the Rights of the Child strongly recommended that the Government take urgent measures to end the sale, trafficking and sexual exploitation of children through, among others, the adoption and implementation of appropriate legislation and the use of the criminal justice process to punish those persons responsible for such practices.

The Committee noted that the Government ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in November 2001. It also noted that section 67 of the Penal Code prohibits the forceful abduction, restraint or detention of any person. Section 68 prohibits the abduction, restraint or detention of

any person for the purpose of sale as slaves or the use of persons placed under their authority for that purpose. As indicated by the Government to the Committee on the Rights of the Child, the provisions of the Penal Code to suppress the sale and trafficking of children for sexual exploitation are not appropriate in view of the extent of the phenomenon. ***The Committee therefore requests the Government to take the necessary measures, as a matter of urgency, to prohibit in national legislation the sale and trafficking of children under 18 years of age for the purposes of sexual exploitation and to adopt appropriate penalties for contraventions of the prohibition.***

2. ***Forced recruitment of children for use in armed conflict.*** With reference to its observations under Convention No. 29, the Committee noted that, in her report on the situation of human rights in the Democratic Republic of the Congo in April 2003 (E/CN.4/2003/43, paragraphs 33–36), the United Nations Special Rapporteur indicated that the phenomenon of child soldiers continues to be very disturbing. There is very little demobilization and mass recruitment taking place in the east of the country; according to UNICEF and the NGOs, there are more than 30,000 child soldiers in the Democratic Republic of the Congo. In Uvira, in South Kivu, all the armed groups in the region (RCD/Goma, Maï-Maï, Banyamulenge) continue to recruit children. Children aged under 15 make up a large proportion of the Maï-Maï, the Congolese National Army (ANC) and the Congolese Patriotic Union (UPC). The UPC has on several occasions ordered local communities to “supply children” for the war effort. According to the information transmitted to the Special Rapporteur, many child soldiers are abducted from their families by the various armed groups. They include young girls, who are frequently used as sex slaves for the soldiers. Many of the children are sent to the front.

The Committee also noted that, according to the report of the Secretary-General of the United Nations on children and armed conflict of 9 February 2005 (A/59/695-S/2005/72, paragraphs 15–22), since the establishment of the Transitional Government in the Democratic Republic of the Congo, the *Forces armées congolaises* (FAC, the armed forces of the former Government), the *Mouvement de libération du Congo* (MLC), the *Rassemblement congolais pour la démocratie-Goma* (RCD-Goma), the *Rassemblement congolais pour la démocratie-Kisangani/Mouvement de libération* (RCD-K/ML), the *Rassemblement congolais pour la démocratie-National* (RCD-N) and the main Maï-Maï groups represented at the inter-Congolese dialogue have been integrated into the new national army, the *Forces armées de la République démocratique du Congo* (FARDC). According to the Secretary-General, while this is a positive step, the various military units have yet to be fully integrated. In many cases, the units are only nominally FARDC, and some of them continue to use children. Since the designation of FARDC regional military commanders in October 2003, some 5,000 children, a small number of them girls, have been released from armed forces and groups. The Secretary-General however indicates that, despite some advances, thousands of children remain in the armed forces and armed groups in the Democratic Republic of the Congo, and recruitment, although not systematic, has continued. Although reiterating its commitment to separate all children from the FARDC, the *état-major* has not yet provided adequate information about the presence of children in its numerous brigades. While some regional and local commanders have released children, no mass release of children has yet taken place.

The Committee noted that the Democratic Republic of the Congo ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in November 2001. It also noted that Article 184 of the Transitional Constitution provides that no one shall be recruited into the armed forces of the Democratic Republic of the Congo nor take part in a war or hostilities unless he has reached the age of 18 years at the time of recruitment. Furthermore, the Committee noted that the Government has adopted Legislative Decree No. 066 of 9 June 2000 to demobilize and reintegrate vulnerable groups present in the fighting forces (Legislative Decree No. 066). Under the terms of section 1 of Legislative Decree No. 066, an order has been issued to demobilize the vulnerable groups in the Congolese armed forces or other armed groups operating in the Democratic Republic of the Congo and to provide for their socio-economic integration and their integration into their families. Under section 2, the term “vulnerable groups” includes child soldiers, girls or boys aged under 18 years, which constitute a specific group requiring urgent humanitarian intervention.

Despite the action taken by the Government in this field, the Committee expressed particular concern at the current situation of children who are still recruited for armed conflict in the Democratic Republic of the Congo. In this respect, the Committee referred to the United Nations Security Council which, in resolution No. 1493, adopted on 28 July 2003, indicates that it “strongly condemns the continued recruitment and use of children in the hostilities in the Democratic Republic of the Congo, especially in North and South Kivu and in Ituri”. ***With reference to the United Nations Human Rights Commission, which in resolution No. 84, adopted on the 22 April 2004, “urges all the parties (...) to put an end to the recruitment and use of child soldiers, contrary to international law (...)”, the Committee requests the Government to provide information on the measures taken to ensure compliance with the legislation applicable in respect of the forced and compulsory recruitment of children for use in armed conflict. It also requests the Government to redouble its efforts to improve the situation. Furthermore, the Committee requests the Government to take measures as a matter of urgency to ensure that young persons under 18 years of age are not forced to take part in armed conflict either in the national armed forces or in rebel groups, and to provide information on any further measures adopted or envisaged for this purpose. The Committee also requests the Government to provide a copy of Legislative Decree No. 066 of 9 June 2000 on the demobilization and reintegration of vulnerable groups present in the fighting forces.***

*Clause (d). Hazardous work. Mines.* In its communication, the Confederation of Trade Unions of the Congo indicated that young persons under 18 years of age are engaged in mineral quarries in the provinces of Katanga and East Kasai. In this respect, the Committee noted that, in her report on the situation of human rights in the Democratic Republic of the Congo in April 2003 (E/CN.4/2003/43, paragraph 59), the United Nations Special Rapporteur noted that military units recruit children and force them to work, especially to extract natural resources. She added that NGOs in South Kivu informed her of children being recruited by armed groups to work in mines. The Committee referred to its observations under Convention No. 29, in which it noted the Concluding Observations of the Committee on the Rights of the Child of July 2001 (CRC/C/15/Add.153, paragraphs 66 and 67), according to which many children are at work in dangerous work environments, particularly in the Kasai mines and at certain locations in Lubumbashi. The Committee on the Rights of the Child recommended that the Government take measures to enforce legal protection in both the formal and informal work sectors, including in mines and other harmful environments.

The Committee noted that section 3(2)(d) of the Labour Code prohibits child labour in its worst forms, and particularly work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, dignity or morals of children. Under the terms of section 1 of Ministerial Order No. 68/13 of 17 May 1968 determining the conditions of work of women and children (Order No. 68/13), it is prohibited for any employer to engage children in work in excess of their strength or exposing them to high occupational risks. The Committee also noted that under section 32 of Order No. 68/13, the extraction of minerals, shale, materials and debris from mines, open cast mines and quarries, as well as earthworks, are prohibited for young persons under 18 years of age. The Committee noted that section 326 of the Labour Code establishes penalties for violations of

the provisions of section 3(2)(d) respecting hazardous work. Furthermore, it noted that the Democratic Republic of the Congo participates in the certification scheme for the internal control of diamonds established by the Kimberley Process. The Committee observed that although the legislation is in conformity with the Convention on this point, child labour in mines is a problem in practice. **The Committee requests the Government to provide information in relation to the allegations made by the Confederation of Trade Unions of the Congo. It also requests the Government to redouble its efforts to ensure the effective application of the legislation for the protection of children against hazardous types of work, and particularly hazardous work in mines.**

*Article 7, paragraph 1. Penalties.* The Committee recalled that, under *Article 7, paragraph 1*, of the Convention, the Government has to take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of penal sanctions. **The Committee therefore requests the Government to indicate the penal provisions relating to: the sale or trafficking of children for sexual exploitation; the forced or compulsory recruitment of children for use in armed conflict; the engagement of children in hazardous work in mines. The Committee also requests the Government to provide information on the number and nature of the infringements reported, the investigations undertaken, legal proceedings initiated, convictions and the penalties applied in practice.**

*Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and ensure their rehabilitation and social integration. 1. Sale and trafficking of children for sexual exploitation.* The Committee noted that, in its concluding observations of July 2001 (CRC/C/15/Add.153, paragraph 69), the Committee on the Rights of the Child recommended to the Government that the police force and border officials should receive special training to help in combating the sale, trafficking and sexual exploitation of children, and that programmes be established to provide assistance, including rehabilitation and social integration, to the child victims of sexual exploitation. **The Committee requests the Government to provide information on the measures adopted to ensure the rehabilitation and social integration of young persons under 18 years of age who are victims of sale and trafficking for sexual exploitation.**

*2. Child soldiers.* The Committee noted that the Government, through the Ministries of Human Rights and Defence, has adopted, in collaboration with the National Demobilization and Reintegration Bureau (BUNADER), a national programme of disarmament, demobilization and reintegration of ex-combatants (PNDR). It also noted that a National Commission on Disarmament, Demobilization and Reintegration was established in March 2004. Furthermore, the Committee noted that the Government is participating in the ILO/IPEC interregional project on the prevention and reintegration of children involved in armed conflict, which also covers Burundi, Rwanda, Congo, Philippines, Sri Lanka and Colombia. The objectives of the programme are to prevent the recruitment of children in armed conflict, facilitate their removal and ensure their social integration.

The Committee also noted that, in his report of 9 February 2005 on children and armed conflict (A/59/659-S/2005/72, paragraphs 15–22), the Secretary-General of the United Nations indicated that in early 2004 the Transitional Government adopted a national policy and procedural framework for the disarmament, demobilization and reintegration of children in FARDC and all other armed groups. The National Commission on Disarmament, Demobilization and Reintegration has been actively planning the National Programme of Disarmament, Demobilization and Reintegration with the Military Integration Structure (MONUC), the United Nations country team and NGOs. During the reporting period, MONUC, UNICEF and their child protection partners have been collaborating with the National Commission in the ongoing activities to remove children from the armed forces and armed groups. They have also been pursuing dialogue with the military authorities to advocate and plan the separation of children. In order to do so, direct contacts have been made with field commanders, the Ministry of Defence and the FARDC leadership. Since the designation of FARDC regional military commanders in October 2003, some 5,000 children, a small number of them girls, have been released from armed forces and groups. The planning of reintegration projects has also continued. The Secretary-General adds that in Ituri, some progress has been made through dialogue with various armed groups, as well as through collaborative disarmament, demobilization and reintegration planning by the United Nations country team and NGOs. In May 2004, the *Forces armées populaires congolaises* (FAPC), the *Front nationaliste et intégrationniste* (FNI), the *Parti pour l'Unité et la sauvegarde du Congo* (PUSIC), the *Union des patriotes congolais* (UPC-Thomas Lubanga faction) and the UPC-Floribert Kisembo faction formally undertook to participate in the disarmament and community reintegration programme, which first became operational in early September 2004. As of mid-December, almost 700 children had passed through this programme. An unspecified number of children had been released from these groups prior to the launching of the programme.

**The Committee encourages the Government to continue collaborating with the various bodies involved in the disarmament and community integration process with a view to removing children from armed forces and groups. It requests the Governments to provide information on the impact of the ILO/IPEC interregional programme on the prevention and reintegration of children involved in armed conflict and the results achieved. The Committee also requests the Government to provide information on the time-bound measures taken to ensure the rehabilitation and social integration of the children who are in practice withdrawn from armed forces and groups.**

*Article 7, paragraph 3. Competent authority responsible for the implementation of the provisions giving effect to the Convention.* The Committee noted the Government's indication that the Ministry of Labour and Social Insurance, through the Committee to Combat Child Labour, is responsible for the implementation of the provisions giving effect to the Convention. The Government added that the Committee to Combat Child Labour will formulate a national strategy, monitor its implementation and evaluate the effect given to the measures recommended. However, the Committee noted that in its communication to the Confederation of Trade Unions of the Congo stated that, although section 4 of the Labour Code provides for the establishment of a Committee to Combat Child Labour, it has never been created. **The Committee requests the Government to provide information relating to the allegations of the Confederation of Trade Unions of the Congo. It also requests the Government to provide information on the national strategy formulated by the Committee to Combat Child Labour and to provide a copy when it has been adopted.**

*Article 8. Enhanced international cooperation and assistance.* The Committee noted that the Democratic Republic of the Congo is a member of Interpol, the organization which assists in cooperation between countries in the various regions, in fields such as combating the trafficking of children. It also noted, according to World Bank information, that the Government has been preparing a Poverty Reduction Strategy Paper (PRSP) since 2002, with the development phase of the strategy due to begin in 2005. **Recalling that poverty reduction programmes contribute to breaking the circle of poverty, which is essential for the elimination of the worst forms of child labour, the Committee requests the Government to provide information on any significant impact of the PRSP on the elimination of the worst forms of child labour, and particularly on the sale and trafficking of children for sexual exploitation, the forced recruitment of children for use in armed conflict and the performance of hazardous work in mines.**

The Committee is also 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 hopes 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, paragraph 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, paragraph 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 to 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 hopes 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.*

## Honduras

### Minimum Age Convention, 1973 (No. 138) (ratification: 1980)

The Committee notes the Government's report and the attached documentation. It also notes the detailed observations made by the Honduran Council for Private Enterprise (COHEP).

*Article 2, paragraph 1, of the Convention. Scope of application.* In its previous comments, the Committee noted that it would be necessary to amend section 2(1) of the Labour Code, which excludes from its scope agricultural and stock-raising undertakings that do not permanently employ more than ten workers, so that the minimum age provisions contained in the Labour Code apply to this category of workers. In this respect, it noted the Government's indications that the draft revision of the Labour Code contained provisions which would bring the national labour legislation into conformity with the international Conventions ratified by Honduras, thereby harmonizing the provisions of the Labour Code and the 2001 Child Labour Regulations with those of the 1996 Code for Children and Young Persons. This would

give effect to the provisions respecting the minimum age for admission to work to young persons working under a contract of employment or on their own account. The Committee also noted certain statistics contained in the national report on child labour in Honduras of 2002, according to which 54.3 per cent of children between 5 and 9 years of age and 59.8 per cent of those between 10 and 14 years of age work in agriculture, forestry, hunting and fisheries. In addition, 6.2 per cent of children between 5 and 17 years of age in urban areas and 7 per cent in rural areas work on their own account. The Committee hoped that the draft revision of the Labour Code would be adopted in the near future.

The Committee notes the Government's indications that, although the draft revision of the Labour Code has still not been adopted, it is one of the Government's priorities and that it will examine the possibility of including the Committee's recommendations. **Observing that it has been raising this matter for a number of years, and in view of the worrying statistics referred to above, the Committee expresses the firm hope that the draft revision of the Labour Code will be adopted in the near future and that it will contain provisions guaranteeing the protection afforded by the Convention to children who work in agricultural and stock-raising undertakings that do not permanently employ more than ten workers.**

*Article 2, paragraph 4. Minimum age for admission to employment or work.* In its previous comments, the Committee noted that, under section 120(2) of the Code for Children and Young Persons of 1996, a minor under 14 years of age may not, under any circumstances, be permitted to work. The Committee also noted that, under section 32(1) of the Labour Code, young persons under 14 years of age and those having reached this age who are still engaged in compulsory education are not allowed to work. However, it noted that, under section 32(2) of the Labour Code, the authorities responsible for supervising work by persons under 14 years of age may permit them to work if they consider that it is indispensable for ensuring their subsistence or that of their parents or their brothers and sisters, and provided that it does not prevent them from completing their compulsory schooling. The Government indicated that cultural practices in the country make child labour legitimate at an age that is well below the minimum age for admission to employment or work specified when the Convention was ratified, namely 14 years. The Committee also noted the measures adopted by the COHEP and the Chambers of Commerce to prohibit their members from employing boys and girls under 14 years of age and to prevent the access of children to the workplace, even with their parents. The Committee requested the Government to provide information on the measures adopted or envisaged to ensure that no minor under 14 years of age is permitted to work in any sector of economic activity.

In its report, the Government indicates that article 128(7) of the Constitution of Honduras provides that young persons under 16 years of age and those who have reached this age but are still subject to compulsory schooling may not be engaged in any work. It adds that section 119 of the Code for Children and Young Persons provides that child labour is subject to the provisions of article 128 of the Constitution. The Committee notes that section 120 of the Code for Children and Young Persons is in conformity with the age specified by the Government, namely 14 years. However, it observes that, in the same way as section 32(2) of the Labour Code, article 128(7) of the Constitution provides that the authorities responsible for labour may permit young persons of 16 years of age and less to work if they consider that it is indispensable for ensuring their subsistence or that of their parents or of their brothers and sisters, and provided that it does not prevent them from completing their compulsory education. The Committee reminds the Government that, under *Article 2, paragraph 1*, of the Convention, no one under the age specified shall be admitted to employment or work in any occupation, subject to the derogations envisaged in *Articles 4 to 8* of the Convention. **The Committee expresses the firm hope that, in the context of the revision of the Labour Code, the Government will take into account the above comments and it requests the Government to provide information on the measures adopted or envisaged to ensure that no minor under 14 years of age is permitted to work in any sector of economic activity.**

*Article 3, paragraph 3. Hazardous work from the age of 16 years.* The Committee noted previously that, under section 122(3) of the Code for Children and Young Persons of 1996, young persons between 16 and 18 years of age may be permitted to perform hazardous types of work, as listed in section 122(2) of the Code, if so approved by technical studies undertaken by the National Vocational Training Institute or a specialized technical institute under the responsibility of the Secretariat of State for Public Education. The Committee noted the Government's indication that the Department of Labour and Social Security examines the technical studies with a view to certifying that the workloads associated with the tasks in question can be performed by young persons between 16 and 18 years of age and that occupational safety measures are adopted in order to minimize the dangers to their health and safety. The Committee requested the Government to provide information on the number of permits granted by the Department of Labour and Social Security to young persons between 16 and 18 years of age.

In its report, the Government indicates that the use of the term "could" in section 122 of the Code for Children and Young Persons means that a work permit for a young person over 16 years of age may only be granted in cases in which, in the view of the Department of Labour and Social Security, the work would not prejudice the young person. The Government adds that for work to be permitted by a young person, the latter must attend school. While taking due note of the information provided by the Government, the Committee reminds the Government that, under *Article 3, paragraph 3*, of the Convention, the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, 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 view of the fact that, according to the**

*statistics contained in the national report on child labour in Honduras of 2002, a large number of children still work in hazardous activities, the Committee requests the Government to take the necessary measures to ensure that, where a young person of 16 years of age is permitted to perform hazardous types of work, the conditions set out in this provision of the Convention are observed. It once again requests the Government to provide information on the number of work permits granted by the Department of Labour and Social Security to young persons between 16 and 18 years of age.*

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted the 2003 statistics provided by the Government, according to which 255,972 children between the ages of 5 and 17 years were engaged in an economic activity, with 65.4 per cent of them being in rural areas and 34.6 per cent in urban areas. It also noted the measures adopted by the Government to combat child labour, including the adoption of the National Action Plan on the prevention and gradual and progressive elimination of child labour and the implementation of various programmes of action in collaboration with ILO/IPEC.

In this respect, the Committee notes that a new plan for the prevention and gradual and progressive elimination of child labour is currently being developed and will be closely linked to the worst forms of child labour. It further notes that the country is collaborating with ILO/IPEC, particularly for the elimination of the worst forms of child labour. The Committee also notes the information provided by the COHEP concerning its programme of monthly grants for students, particularly with a view to reducing the school drop-out rate. Furthermore, the COHEP has supported the ILO/IPEC project for the elimination of child labour in the firework sector and has given instructions to all enterprises in the formal economy not to employ children under 14 years of age.

However, the Committee notes that, in its concluding observations on the third periodic report by the Government in February 2007, the Committee on the Rights of the Child expressed concern at: the lack of funds allocated for the implementation of the National Plan of Action for the prevention and gradual and progressive elimination of child labour; the large number of children, especially in rural areas and among the indigenous people, working in exploitative conditions, including children engaged in deep sea fishing in Puerto Lempira; young persons between 14 and 17 years of age working in mines; and the high percentage of children who do not attend school (CRC/C/HND/CO/3, paragraph 72). While noting the efforts made by the Government to combat child labour, the Committee expresses serious concern at the situation of children under 14 years of age compelled to work in the country. ***It therefore strongly encourages the Government to renew its efforts to combat child labour and requests it to take the necessary measures, including the allocation of additional resources, for the implementation of the new National Plan. In this respect, the Committee requests the Government to provide information on the implementation of this National Plan and the programmes of action which will be established in this context, as well as on the results achieved in terms of the progressive abolition of child labour and in the field of school attendance.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's report and the attached documents.

*Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (b). Sale and trafficking of children for commercial sexual exploitation and the use of children for prostitution, for the production of pornography or for pornographic performances.* With reference to its previous comments, the Committee notes with satisfaction the adoption of Decree No. 234-2005 of 28 September 2005 reforming the Penal Code. It notes in particular that sections 148 and 149 prohibit procuring, namely the recruitment and submission of a person to commercial sexual exploitation, and the international and internal trafficking of persons for commercial exploitation. These two provisions also establish heavier penalties when the victim is under 18 years of age. Furthermore, sections 149-B and 149-D prohibit the use of young persons under 18 years of age in public or private exhibitions or performances of a sexual nature and in the production of pornography. Section 149-E also penalizes the international and national promotion of the country as a tourist destination accessible for sexual activity.

However, the Committee notes, according to the information contained in the evaluation reports of the ILO/IPEC subregional project entitled "Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama and the Dominican Republic", in which Honduras is participating along with Belize, Costa Rica, El Salvador, Guatemala and Nicaragua, that despite the progress achieved, the problem of the commercial sexual exploitation of young persons under 18 years of age still persists in the country. In this respect, the Committee also notes that, in its concluding observations of February 2007 (CRC/C/HND/CO/3), the Committee on the Rights of the Child expressed concern that, despite the measures taken, particularly in terms of legislation, the commercial sexual exploitation of children is common in Honduras and is not only due to poverty and the socio-economic situation prevailing in the country. ***The Committee considers that the new provisions of the Penal Code improve protection against the commercial sexual exploitation of children and trafficking for this purpose and encourages the Government to redouble its efforts to ensure in practice the protection of young persons under 18 years of age against this worst form of child labour. It requests the Government to provide information on the application of the new provisions in practice, including statistics on the number and nature of infringements reported, investigations carried out, prosecutions, convictions and penal sanctions applied.***

*Article 6. Programme of action. National Plan of Action on the commercial sexual exploitation of children.* The Committee notes that, in the context of the ILO/IPEC subregional project on the prevention and elimination of the commercial sexual exploitation of children, a National Plan of Action to prevent and eliminate the commercial sexual exploitation of children has been developed. **It requests the Government to provide information on the programmes of action developed in the context of the implementation of the National Plan of Action and the results achieved.**

*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 the removal of children from these worst forms. The commercial sexual exploitation of children. 1. ILO/IPEC subregional project.* The Committee notes the information contained in the evaluation reports of the ILO/IPEC subregional project on the prevention and elimination of the commercial sexual exploitation of children in Central America, Panama and the Dominican Republic, according to which around 240 children have been prevented from being the victims of commercial sexual exploitation or have been removed from this worst form of child labour in the country. **The Committee strongly encourages the Government to continue its efforts to combat commercial sexual exploitation. The Committee requests the Government to continue providing information on the implementation of the ILO/IPEC subregional project and on the results achieved in terms of: (a) preventing children from becoming victims of commercial sexual exploitation or trafficking for this purpose; and (b) providing the necessary and appropriate direct assistance for the removal of the child victims of these worst forms of child labour and for their rehabilitation and social integration.**

*2. Tourist activities.* In its previous comments, the Committee noted that, according to the information contained in the ILO/IPEC study of 2002 entitled “Commercial sexual exploitation of boys, girls and young persons in Honduras”, commercial sexual exploitation is an activity that is on the increase in the country. This form of exploitation exists throughout the national territory, for example in tourist areas, border areas, ports and on international traffic routes. **As the country has a certain level of tourism, the Committee requests the Government to indicate whether measures have been taken to raise the awareness of actors directly linked to the tourist industry, such as associations of hotel owners, tourist operators, taxi companies and the owners of bars, restaurants and their employees.**

*Clause (d). Children at special risk. HIV/AIDS orphans.* The Committee noted previously that, according to the study entitled “Commercial sexual exploitation of boys, girls and young persons in Honduras”, published by ILO/IPEC in 2002, HIV/AIDS is a health problem affecting children who are victims of commercial sexual exploitation. The Committee also noted that, according to the Joint United Nations Programme on HIV/AIDS (UNAIDS), Honduras reports 50 per cent of the cases of HIV/AIDS of the whole of Central America. The Committee notes that, according to the paper entitled *AIDS epidemic update*, published in December 2006 by UNAIDS and the WHO, the increasing incidence of the virus is a cause for concern. In this respect, the Committee notes that, in its concluding observations of February 2007 (CRC/C/HND/CO/3), the Committee on the Rights of the Child expressed concern at this situation. Noting the seriousness of this situation, the Committee regrets the absence of information in the Government’s report on this issue. The Committee once again observes that HIV/AIDS has serious consequences for orphans, who are at increased risk of being engaged in the worst forms of child labour, and particularly commercial sexual exploitation. **It therefore urges the Government to take the specific time-bound measures taken to prevent child HIV/AIDS orphans from being engaged in the worst forms of child labour and to ensure the rehabilitation and social integration of these children removed from these worst forms.**

*Clause (e). Special situation of girls.* In its previous comments, the Committee noted that, according to the ILO/IPEC study “Commercial sexual exploitation of boys, girls and young persons in Honduras”, activities relating to the commercial sexual exploitation of boys, girls and young persons are linked to international trafficking networks and affect girls in particular. **Noting the absence of information on this subject in the Government’s report, the Committee once again requests it to provide information on the manner in which it intends to accord special attention to these girls and remove them from commercial sexual exploitation.**

*Article 8. International and regional cooperation. Commercial sexual exploitation.* The Committee takes due note of the measures adopted in the context of the ILO/IPEC subregional project on the prevention and elimination of the commercial sexual exploitation of children in Central America, Panama and the Dominican Republic, including awareness-raising campaigns for the public and the media and the holding of a regional seminar bringing together the governments collaborating in the ILO/IPEC project and Interpol agents. The Committee notes that the strengthening of horizontal collaboration between countries participating in the project is planned in the context of the ILO/IPEC subregional project. The Committee is of the view that cooperation between law enforcement agencies, particularly the judicial authorities and police forces, is indispensable to prevent and eliminate commercial sexual exploitation, and particularly the sale and trafficking of children for that purpose, through the collection and exchange of information and through assistance to detect and prosecute the individuals involved and to repatriate victims. **The Committee therefore hopes that, in the context of the implementation of the ILO/IPEC subregional project on the prevention and elimination of the commercial sexual exploitation of children, the Government will take measures to cooperate with the participating countries and accordingly reinforce security measures, particularly on the common borders with El Salvador, Guatemala and Nicaragua, with a view to bringing an end to this worst form of child labour. It requests the Government to provide information on this subject.**

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

## Indonesia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

The Committee notes the Government's report. It also notes the communication of the International Trade Union Confederation (ITUC) dated 6 September 2005. *It requests the Government to supply further information on the following points.*

*Article 2, paragraph 1, of the Convention. Scope of application. 1. Self-employment.* The Committee had previously noted the ITUC's indication that child labour was widespread in Indonesia and that most child labour took place in informal unregulated activities, such as street vending, agricultural and domestic sectors. The Committee had also noted that Act No. 13 of 2003 (Manpower Act) appears to exclude from its application children who are engaged in self-employment or in employment without a clear wage relationship. It had further noted that the Government was in process of formulating a regulation concerning children working in the informal sector, in conformity with section 75 of the Manpower Act. The Committee notes the Government's statement that at the moment it is still coordinating with stakeholders concerning an arrangement for children working outside an employment relationship. *The Committee requests the Government to provide information on any progress made towards the adoption of a regulation concerning children working outside an employment relationship.*

*2. Domestic work.* The Committee notes the ITUC's allegation in its communication of 6 September 2005 that girls as young as 12 years routinely work 14–18 hours a day, seven days a week, without a day off. Moreover, according to the ITUC, many child domestic workers are promised decent wages, good working conditions and the opportunity to attend school, but these promises have rarely materialized. Very few are able to attend formal school, and most receive wages far below the minimum wage in the formal sector. Some receive no wages at all. The Committee notes the ITUC's information that, although Indonesia ratified the Minimum Age Convention, 1973 (No. 138), and national law sets the minimum age for employment at 15 years, girls were found typically entering domestic work between the age of 12 and 15 and some begin work even earlier. The ITUC adds that it would appear that the Government had failed to take meaningful action to protect domestic workers – who number at minimum 688,000 children – from exploitation and abuse. National labour laws exclude domestic workers from the minimum protections afforded to workers in the formal sector, such as the minimum wage, hours of work, rest, holidays, employment contract and social security. Laws enacted to protect children from labour exploitation do not address child domestic labour.

The Committee notes the Government's information submitted in its report under Convention No. 182 that it is in the process of regulating domestic work, including protecting child domestic workers. The Committee expresses its deep concern at the situation of children under the age of 15 who work as domestic workers. *It strongly encourages the Government to redouble its efforts to improve the situation and to ensure that children under 15 do not perform domestic work. It requests the Government to take all the necessary measures to ensure that the above regulation is adopted as soon as possible so that child domestic workers benefit from the protection laid down in the Convention.*

The Committee is also addressing a direct request to the Government concerning other points.

### **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 6 September 2005. *It requests the Government to provide further information on the following points.*

*Article 3. 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 ITUC's indication that the trafficking of persons, including for the purpose of prostitution, is widespread and that as many as 20 per cent of the 5 million migrant workers, who left Indonesia to work in other countries, were victims of trafficking. It had noted the Government's information that a draft bill on trafficking was under preparation. The Committee notes with satisfaction that the Indonesian House of Representatives has passed the long-awaited Act on human trafficking. The Act of 19 April 2007 criminalizes all kinds of human trafficking, at home and overseas. It stipulates that whoever recruits and transfers people by force, abduction or deceit, in order to exploit them, faces three to 15 years' imprisonment or fines of 120 million to 600 million rupiahs or both. Anyone who brings into the country foreigners for purposes of exploitation or adopts children for a similar purpose, commits a criminal offence. Moreover, the Act requires traffickers to pay compensation for the material and immaterial losses suffered by the victims.

*Article 5. Monitoring mechanisms. The police and inspectors.* The Committee had previously noted that the police were carrying out investigations in prostitution areas in different provinces which sometimes resulted in the arrest of the perpetrators of trafficking and the finding and returning of victims to their places of origin. It had noted that a two-year police training project was launched, in August 2003, with the support of ILO/IPEC. It had also noted that training sessions were conducted in several provinces to provide labour inspectors with the necessary knowledge to combat child trafficking. The Committee notes the Government's information that 64 trafficking cases were filed in 2006 involving 177 children, of which 35 are before the courts while the rest are under investigation. *The Committee encourages the Government to continue to strengthen the role of the police and labour inspectors in order to enable them to combat the trafficking of children for labour and sexual exploitation. It requests the Government to provide information on the*

*measures taken to this end. It also requests the Government to supply, with its next report, extracts of the inspection reports specifying the extent and nature of violations detected involving the trafficking of children for labour and sexual exploitation. It finally requests the Government to continue providing information on the convictions and penal sanctions applied.*

*Article 6, paragraph 1. Programmes of action to eliminate the worst forms of child labour. 1. National Action Plan for Abolishing Women and Child Trafficking.* The Committee had previously noted that a five-year National Action Plan for Abolishing Women and Child Trafficking (NAP against WCT) was endorsed through Presidential Decree No. 88/2002. It had noted that the Plan's objective consists in reducing by half the number of child victims of trafficking by 2013. The Committee had also noted that one of the targets of the NAP against WCT is to increase the number of crisis service centres for the rehabilitation and social integration of child victims of trafficking and that 200 special centres for combating trafficking were established.

The Committee notes the Government's information that the second phase of the NAP against WCT consists in establishing in a selected region a "model of good practice" in handling cases of trafficking to be replicated in other regions. Jakarta, as the previous role model, has established a centre for crisis service to rehabilitate and reintegrate child victims of trafficking and commercial sexual exploitation. The Committee also notes the Government's information that, as a result of the NAP against WCT, up to 1,404 children were prevented from entering prostitution and 174 were removed. *The Committee requests the Government to continue providing information on the achievements of the National Action Plan for the Elimination of Trafficking in Women and Children, and its impact with regard to removing child victims of trafficking from labour or sexual exploitation and providing for their rehabilitation and social integration.*

*2. ILO/IPEC TICSА Project on combating child trafficking for sexual and labour exploitation in South and South-East Asia – Phase II (TICSА II).* The Committee had previously noted that the subregional ILO/IPEC TICSА Project was adopted in June 2003 to complement the ILO/IPEC Project of Support to the Indonesian National Plan of Action for the Elimination of the Worst Forms of Child Labour. It had noted that the TICSА Project's objective is to contribute to the progressive elimination of trafficking in child labour and sexual exploitation in Indonesia by: (i) assisting children and families in high-risk sending areas to reduce children's vulnerability to trafficking; and (ii) improving the capacity of social partners to provide services to rehabilitate and reintegrate child victims of trafficking. The Committee notes the Government's information that 1,404 children were prevented from trafficking and sexual exploitation and 53 removed. It also notes the Government's information that the total number of children who benefited from the programme is 3,359. *The Committee requests the Government to continue providing information on the impact of the ILO/IPEC TICSА II in combating the sexual and labour exploitation of children under 18 years of age, and results attained.*

*Article 7, paragraph 2. Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. 1. Children on fishing platforms.* The Committee had previously noted that, according to the document entitled "Support to the Indonesian National Plan of Action and the Development of the Time-Bound Programme for the Elimination of the Worst Forms of Child Labour" (*TBP*), more than 7,000 children were estimated to be engaged in deep-sea fishing in North Sumatra. It had also noted the indication of the government representative to the Conference Committee on the Application of Standards (June 2004), that a project was launched in 2000 and extended in 2004 aimed at preventing the employment of children on fishing platforms, raising awareness on the danger of working on a fishing platform, and providing for direct assistance and the removal of children from this type of work. It had finally noted the Government's indication that ILO/IPEC technical assistance has contributed to the withdrawal of 344 children from fishing platforms and that 2,111 children were prevented from working in "jermas" since 2000.

The Committee notes the Government's information that one of the programmes adopted in implementing the National Plan of Action on the Elimination of the Worst Forms of Child Labour targets children working in the offshore fishery sector. As a result of this programme, 3,004 children were prevented from working in this sector and 174 were removed. The Committee further notes the Government's information that it has established a special monitoring team consisting of local government and personnel from the main naval base in order to prevent children from working in fishing platforms. *The Committee requests the Government to continue providing information on the impact of the TBP and other measures on withdrawing children under 18 years from fishing platforms and results achieved.*

*2. Child domestic workers.* The Committee notes the ITUC's allegations that child domestic workers in Indonesia suffered some form of sexual, physical or psychological abuse. The ITUC adds that the National Plan of Action for the Elimination of the Worst Forms of Child Labour identified children who are physically or economically exploited as domestic servants as being involved in a worst form of child labour. However, domestic work – involving at least 688,000 children – was not included in the first phase of the National Plan of Action. According to the ITUC, it seems that the Government has failed to take meaningful action to protect child domestic workers from exploitation and abuse. Moreover, laws enacted to protect children from labour exploitation have not been utilized to address child domestic labour.

The Committee notes the Government's information that various measures have been taken, either by the Government or by society at large, to prevent children from working as domestic workers. Concretely, the Committee of National Action on the Worst Forms of Child Labour has set up a programme aimed at preventing school-aged children from working as domestic workers. Moreover, various programmes carried out by a number of child caring institutions

have had a positive impact on preventing children from working as domestic workers. The Committee also notes that the programme “Mobilizing action for the protection of domestic workers from forced labour and trafficking in South-East Asia” was launched in 2004 to address the needs of domestic workers in Indonesia and the Philippines. The programme proposes four areas for concrete action: (a) a law and policy framework on domestic work; (b) advocacy and research; (c) outreach and empowerment of domestic workers at the national and international levels; (d) targeted interventions to respond effectively to reports of forced labour and trafficking affecting domestic workers. The Committee finally notes that, congruent to the TICSA project and the *TBP* on child trafficking, the ILO TC-RAM supports the ILO/IPEC Programme on Child Domestic Workers. The ILO TC-RAM on child domestic workers aims to increase awareness in general, withdraw child domestic workers (below 15 years), and provide counselling as well as access to non-formal and vocational training service to child domestic workers between 15 and 18 years of age. **The Committee requests the Government to continue to provide information on any relevant results of these programmes on protecting child domestic workers from the worst forms of child labour and providing for their rehabilitation and social integration.**

The Committee is also addressing a direct request to the Government concerning other points.

## Kenya

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1979)**

The Committee takes note of the Government’s report as well as of the detailed discussion which took place at the Conference Committee on the Application of Standards in June 2006. 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. Scope of application. 1. Branches of economic activity covered by the Convention.* The Committee had previously noted that, according to section 25(1) of the Employment Act, the prohibition on employing children (i.e. a person under 16 years according to section 2 of the Act) is limited to work performed in industrial undertakings. It had noted that the Employment Act of 1976 (Chapter 226) and the Employment Act (Children) Rules of 1977, were being revised so as to bring the national legislation in line with the requirements of ILO Conventions. The Committee had hoped that the amended legislation would extend the application of the minimum age for admission to employment or work to all sectors of the economy. The Committee notes the Government’s information that the draft Employment Bill has extended the application of the minimum age for admission to employment to all sectors of the economy. **It accordingly asks the Government to provide information on the progress made in adopting the amended version of the Employment Bill and to supply a copy of it as soon as it has been adopted.**

*2. Unpaid work.* The Committee had previously noted that section 10(5) of the Children Act, 2001, defines the term “child labour” as any situation where a child provides labour in exchange for payment. Therefore, unpaid workers do not benefit from the protection laid down in the Children Act. The Committee had also noted the Government’s indication that 78 per cent of children (according to the 1998–99 Child Labour Report, published by the Central Bureau of Statistics of the Ministry of Finance and Planning in June 2001) were working for free in family agricultural activities and business enterprises during school holidays and after school. The Committee had requested the Government to take the necessary measures to ensure that children working for free in family agricultural activities and business enterprises were entitled to the protection afforded by the Convention, notably by amending the definition of child labour contained in section 10(5) of the Children Act. The Committee notes the Government’s indication that it intends to harmonize all legislation dealing with children and child labour to conform to the provisions of Conventions Nos 138 and 182. **It hopes that the necessary amendments will soon be adopted.**

*Article 2, paragraph 3. Age of completion of compulsory schooling.* The Committee had previously noted that, under section 7(2) of the Children 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 statement that the draft legislation on compulsory schooling which would address the gap between the age of completion of compulsory schooling (14 years of age) and the minimum age for admission to employment or work (16 years of age), was being prepared. It had requested the Government to provide a copy of the text fixing the age of completion of compulsory schooling. The Committee notes that the Government is committed to the implementation of free primary education for all children. It also notes that, the draft Employment Bill and the Children Act are in agreement over a definition of a child, described as a person under the age of 18 years. However, it notes the Government’s indication that there is no text that specifically fixes the age of completion of compulsory schooling. **The Committee requests the Government to indicate whether it is envisaged to adopt legislation which would fix the age of completion of compulsory schooling at 16.**

*Article 3, paragraph 2. Determination of hazardous work.* In its previous comments, the Committee had noted that section 10(1) of the Children Act, provides that every child under 18 shall be protected from economic exploitation and any work that is likely to be hazardous, or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. The Committee had reminded the Government that, by virtue of *Article 3, paragraph 2*, of the Convention, the types of work or employment considered to be hazardous shall be determined in the national legislation after consultation with the organizations of employers and workers concerned, where such exist. It had hoped that the list of types of hazardous work would be adopted rapidly so as to bring the national legislation in line with the Convention. The Committee notes the Government’s information that it has developed a draft list of hazardous work in consultation with social partners and stakeholders. The list will be reviewed and presented to stakeholders for validation. **The Committee asks the Government to provide a copy of the list of types of hazardous work 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 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. It had requested the Government to indicate whether such regulations had been issued by the competent minister and, if so, to provide a copy. The Committee notes the Government’s information that the competent minister has issued regulations referred to in section 10(4) of the Children Act, which is an act of Parliament. **It once again asks the Government to provide a copy of these regulations.**

*Article 6. Apprenticeship.* The Committee had previously noted that section 25(2) of the Employment Act, 1976, exempts any child employed in an industrial undertaking under a deed of apprenticeship from the provisions on the minimum age for admission to employment. It had also noted that, by virtue of section 8(3) of the Industrial Training Act (Chapter 237), a minor (i.e. a person under 15 years of age according to section 2 of the Act) may enter into apprenticeship with the authorization of his or her parents or guardian or, in the absence of such authorization, of a district officer or a labour officer. Therefore, there appeared to be no provisions in the national legislation that set a minimum age for entry into apprenticeship. The Committee had recalled that, by virtue of *Article 6* of the Convention, only work done by persons of at least 14 years of age within the context of a programme of training or vocational guidance in enterprises is excluded from the scope of this Convention. It had hoped that the necessary amendments would be adopted so as to bring the legislation in line with the Convention. The Committee notes the Government's indication that the Government has undertaken amendments to the Industrial Training Act (Chapter 237) in order to bring the legislation into conformity with the Convention. **The Committee requests the Government to indicate whether these amendments have come into force and, if so, to provide a copy of the amended Industrial Training Act.**

*Article 7, paragraph 1. Admission to light work.* In its previous comments, the Committee had noted that under section 3(1) of the Employment (Children) Rules, 1977, children may be permitted to work with the written permission of an authorized officer except in bars, hotels, restaurants or clubs where intoxicating liquors are sold or anywhere as a tourist guide. Employment in such places will be accepted if the Labour Commissioner has consented in writing and the child is in possession of a copy of such consent (section 3(1)). The Committee had recalled that, by virtue of *Article 7, paragraph 1*, of the Convention, only children from 13 years of age may be permitted to undertake light work which is not likely to be harmful to their health or development; and not such as to prejudice their attendance at school, or their participation in vocational training programmes. It had urged the Government to indicate the measures taken or envisaged to ensure that light work carried out pursuant to section 3(1) of the Employment (Children) Rules, 1977 may only be performed by children of at least 13 years of age. The Committee notes the Government's indication that this issue has been taken into consideration in the process of reviewing the legislation. **It hopes that the necessary amendments will soon be adopted.**

*Article 7, paragraph 3. Determination of light work.* The Committee had previously reminded the Government that, by virtue of *Article 7, paragraph 3*, of the Convention, the competent authority shall determine the activities in which employment or work may be permitted as part of light work. The competent authority shall also prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. The Committee had hoped that the Government would take the necessary measures to ensure that its legislation determines light work activities. The Committee notes that the Government's report contains no information on this point. **It therefore once again requests the Government to indicate the measures taken or envisaged to determine light work activities and to prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken by young persons of 13 years of age and above, in conformity with the Convention.**

*Article 8. Artistic performances.* In its previous comments, the Committee had observed that section 17 of the Children Act provides that a child shall be entitled to leisure, play and participation in cultural and artistic activities. However, it had noted that national legislation does not provide for permits to be granted when children participate in cultural artistic performances. The Committee had drawn the Government's attention to *Article 8* of the Convention, which lays down that after consultation with the organizations of employers and workers concerned, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in *Article 2* of this Convention, for such purposes as participation in artistic performances. Permits so granted shall limit the number of hours during which, and the conditions in which, such employment or work is allowed. The Committee had requested the Government to indicate the measures taken or envisaged in this regard. The Committee notes the Government's indication that this matter will be addressed in the subsidiary legislation, which is being revised. **It asks the Government to inform it 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 activities is granted in individual cases.**

*Part V of the report form. Application of the Convention in practice.* The Committee notes the Government's statement that it will endeavour to provide information on the practical application of the Convention including statistical data on employment of children and inspection reports. **It hopes that the Government will provide the requested information in its next report.**

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

## Kuwait

### Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

The Committee notes the Government's report. **It requests the Government to provide further information on the following points.**

*Article 2, paragraph 1, of the Convention. 1. Scope of application. (a) Seasonal workers.* In its previous comments, the Committee had noted that a draft Labour Law amending Act No. 38 of 1964 on labour in the private sector was being discussed by the national authorities. The Committee notes the Government's indication, in its report, that it shall send a copy of the draft Labour Law to the Office as soon as it is adopted. **Considering, however, that the Government has been referring to the enactment of the draft Labour Law for a number of years, the Committee expresses the firm hope that the Government will take the necessary measures to ensure that it is adopted in the very near future.**

(b) *Domestic workers.* Following its previous comments, the Committee notes the Government's information that the minimum age for domestic work is 20 years, according to section 5(3) of Order No. 640 of 1978 taken by the Minister of Interior, which is attached to the regulations putting into effect the Foreigners' Residence Act. It also notes the Government's indication that it will provide a copy of the rules governing the relationship between domestic workers and their employers which shall be issued by decision of the competent minister once the draft Labour Code is adopted. The Committee observes that, although the Government indicates in its report that a copy of the model contract published by

the Ministry of Interior for the employment of domestic workers is annexed, no such document has been provided to the Office. **The Committee requests the Government to provide a copy of Order No. 640 of 1978 with its next report. It also asks the Government to provide a copy of the model contract for the employment of domestic workers.**

(c) *Self-employment.* Following its previous comments, the Committee notes the Government's indication that it shall provide the Office with information on cases of self-employment and on the situation of street children as soon as it is available. **Recalling that Convention No. 138 requires the fixing of a minimum age for all types of work outside an employment relationship such as self-employment, the Committee trusts the Government will supply information on the situation of self-employed children in its next report, and particularly street children, especially with regard to their age as well as the types of work they undertake.**

2. *Minimum age for admission to employment or work.* The Committee had 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 had 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 trusts that the draft Labour Law will be adopted as soon as possible and once again requests the Government to inform it of any developments in this regard.**

*Article 2, paragraph 3. Age of completion of compulsory schooling.* Following its previous comments, the Committee notes the Government's information that the age of completion of compulsory schooling has been raised to 15 years. It also notes that the Government adopted the education model from a previous 4+4+4 to a new 5+4+3 model for the 2005–06 school year resulting in the fact that compulsory education is extended from eight to nine years.

*Article 9, paragraph 1. Sanctions.* In its previous comments, the Committee had noted that the fines imposed on employers violating the provisions of Act No. 38 of 1964 were low and had invited the Government to take measures to revise and increase those penalties according to *Article 9, paragraph 1*, of the Convention. The Committee notes the Government's information that the draft Labour Law includes harsher sanctions than the ones applied in the current Labour Code. It notes the Government's indication that it will provide the Office with a copy of the new Labour Law as soon as it is adopted by the Majlis El-Ummah (legislative authority).

*Article 9, paragraph 3. Registers of employment.* Following its previous comments, the Committee notes that the Government indicates that a copy of the model register used by employers has been attached to its report. However, the Committee observes that no such document was effectively attached to the Government's report. **Accordingly, it reiterates its request 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.* Following its previous comments, the Committee notes that the statistical compilation for employees in the private sector of 2006 that the Government claims to have attached to its report is not, in fact, attached. **Therefore, it requests the Government to provide the Office with a copy of this statistical compilation including statistical data on the employment of children and young persons, as well as extracts from the reports of inspection services and information on 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.**

## 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.* The Committee previously noted with interest the detailed information on the measures taken by the Government to combat child labour. It nevertheless was seriously concerned by 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 work, of whom approximately half are less than 9 years of age). The Committee encouraged the Government to renew its efforts to progressively improve this situation.

With reference to its previous comments requesting the Government to continue providing detailed information on the development of national policies designed to ensure the effective abolition of child labour and the results attained, the Committee notes 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 notes 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. Moreover, the number of orphans by different age groups is the following: 110,000 (0–4 years), 340,000 (5–9 years) and 558,000 (10–18 years). The Committee noted that the Government is aware of the consequences of HIV/AIDS on orphans, such as increased child labour and children dropping out from school. It also noted that the Strategic Objective No. 3 of the NPA for OVC is "to protect the most vulnerable children through improved policy and legislation, leadership, efficient coordination at all levels".

The Committee once again expresses its serious concern at the situation of the considerable number of children under 14 years of age who are compelled to work. It also is seriously concerned by the high number of child orphans in Malawi due to HIV/AIDS and observes that HIV/AIDS has consequences for orphans, for whom there is an increased risk of being engaged in child labour. **The Committee requests the Government to redouble its efforts to ensure the progressive abolition of child labour. The Committee also requests the Government to provide information on the impact of the NPA for OVC and the Childhood Development Policy towards abolishing child labour, and on the results attained. Finally, the Committee also 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 also addressing a direct request to the Government on other points.

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

## Mali

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee takes note of the Government's report. It takes due note of the information on the measures the Government has taken under the ILO/IPEC–LUTRENA project to prohibit and abolish the sale and trafficking of children, in particular through advocacy and training on child trafficking, inter alia, by means of instructional discussions and films.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children.* In its previous comments, the Committee noted that the Government informed the Committee on the Rights of the Child that Malian children had been taken to Côte d'Ivoire to work in plantations or as domestic servants and that they were subjected to deplorable working conditions and were often unpaid. Some ethnic groups, such as the Bambara, Dogon and Senufo, were particularly vulnerable. The Committee took note of the Government's efforts to combat child trafficking but observed that, despite all endeavours, the Committee on the Rights of the Child had expressed concern at the trafficking of Malian children to other countries in the region, particularly Côte d'Ivoire, and at their subjection to slavery and forced labour (CCPR/CO/77/MLI, 16 April 2003, paragraph 17). The Committee further noted that although section 244 of the Penal Code and section 63 of the Code on the Protection of Children prohibited child trafficking, in practice it was still a problem.

The Committee notes that according to a report published by UNICEF in 2006 on trafficking in human beings, particularly women and children, in West and Central Africa, Malian children are trafficked in the following countries: Côte d'Ivoire, Gambia, Guinea, Ghana and Nigeria. The Committee again observes that although the Government has taken several measures to combat the sale and trafficking of children for the purpose of using their labour, the problem still exists in practice. **The Committee again expresses deep concern at the situation of Malian children who fall prey to trafficking and encourages the Government to step up efforts to remedy it and to take the necessary measures in the immediate future to eliminate the trafficking of children for the purpose of using their labour. The Committee requests the Government to provide information on the effect given to the provisions in the national legislation that deal with trafficking, including statistics on the number and nature of offences reported, the investigations held, the prosecutions, convictions and penalties applied.**

*2. Forced or compulsory labour. Begging.* The Committee notes that, according to the UNICEF 2006 report, *Talibé* children who originate from bordering countries, including Mali, and whom Koranic teachers (*marabouts*) have brought to the city can be found in the streets of Dakar. These children find themselves in conditions of servitude and are obliged to beg daily. The report also mentions the involvement of *marabouts* in child trafficking in which young *Talibé* workers from Burkina Faso are exploited in the rice fields of Mali. They are placed with large-scale farmers who hand over the children's pay to the *marabouts*. The Committee further notes that in its concluding observations of May 2007 (CRC/C/MLI/CO/2, paragraph 62), the Committee on the Rights of the Child noted the efforts undertaken by Mali to reduce child begging by, among others, providing vocational training programmes for child beggars. It nonetheless expressed concern at the growing number of street children and child beggars, referred to as *garibous*, who are pupils under the guardianship of *marabouts*. The Committee on the Rights of the Child likewise expressed concern at their vulnerability, in particular to violence, sexual abuse and exploitation and economic exploitation.

The Committee notes, that according to section 62 of the Code on the Protection of Children, begging as a sole or main activity is dehumanizing and an obstacle to the fulfilment of children's rights. The Committee further notes that according to section 183 of the Penal Code, anyone inciting a child to beg shall be punished by a term of imprisonment of from three months to one year. The Committee is most concerned at the use of children by certain *marabouts*, for purely economic ends, i.e. as a source of labour. **The Committee requests the Government to take the necessary measures to enforce the legislation on begging and to punish marabouts who use children for purely economic ends. It also asks the Government to indicate the effective and time-bound measures it has taken to protect these children from forced labour and to ensure their rehabilitation and social integration.**

*Article 5. Monitoring mechanisms. 1. Monitoring committees.* The Committee notes the information from the Government that under the LUTRENA project, local monitoring committees (CLVs) to combat child trafficking have been established in the circles of Kangala (Koulikoro region), Bougouni, Kolondiéba and Koutiala (Sikasso region) and

others have been reinforced. ***The Committee requests the Government to provide information on the activities of the CLVs, including extracts from reports or documents, together with the results obtained by the CLVs in preventing the trafficking of children under 18 years of age.***

2. *National task force to combat child trafficking.* The Committee notes that according to the activity reports of the ILO/IPEC on the LUTRENA project, a national task force has been set up to combat child trafficking. ***It requests the Government to provide information on the working of the task force, including reports on their activities.***

*Article 7, paragraph 2. Effective and time-bound measures.* The Committee notes with interest the Government's efforts to implement the ILO/IPEC–LUTRENA project. It notes in particular from the ILO/IPEC reports on the project that since the project was launched in 2001, more than 26,730 children have benefited from it. Of these, 14,790 have been withdrawn from this worst form of child labour and 11,940 have been prevented from being employed therein. It also notes that between September 2006 and March 2007, 92 children were rescued from child trafficking and have received education and training.

*Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour and assisting their removal.* 1. *Sale and trafficking of children.* With reference to its previous comments, the Committee takes due note of the information sent by the Government on the implementation of the LUTRENA project in Mali. It notes in particular that, within the framework of the project, more than 3,830 children (1,851 girls and 1,979 boys) have been reintegrated through formal or informal education, vocational training and income-generating activities. Furthermore, three reception and transit centres for victims of child trafficking have been created at Sikasso, Sögou and Mopti. Income-generating activities have been undertaken for the benefit of 30 children and 1,076 parents (422 women and 654 men). Lastly, more than 1,500 social intermediary workers are engaged in identifying children and possible child traffickers, alerting the security services to suspicious persons and informing parents and children about procedures for children travelling abroad. ***The Committee requests the Government to continue to provide information on the measures taken under the LUTRENA project to prevent children under 18 years of age from falling prey to sale or trafficking and to remove children from this worst form of child labour. It also asks the Government to provide information on: (1) the number and location of reception centres for trafficked children that have been set up in Mali to take in trafficked children; (2) the programmes providing specific medico-social monitoring which have been drawn up and implemented for child victims of trafficking.***

2. *Access to free basic education.* In previous comments, the Committee noted with interest that the Government had set up a Ten-Year Education Development Programme (PRODEC), the aim of which was to increase the primary school enrolment rate to 95 per cent by the year 2010 and at the same time improve learning, girls' education, health and hygiene standards. The Committee notes the Government's information that a Medium-Term Expenditure Framework (MTEF) has been planned and should allow capacity building for running PRODEC in liaison with the aims of the Poverty Reduction Strategy Paper (PRSP) and the Millennium Development Goals (MDGs). It also notes the Government's information that there have been significant results in girls' enrolment, informal education, specialized education and the allocation of funds to education. Furthermore, 1,880 teachers have been recruited for the two stages of primary education and school textbooks have been bought and distributed.

The Committee notes, however, that according to a national survey on child labour conducted in 2005, 41 per cent of children aged from 5 to 14 years engage in a full-time economic activity, 25 per cent combine work and studies and 17 per cent go only to school. The net enrolment rate for the first stage (7–12 years) for 2004–05 was 56.7 per cent (48.9 per cent for girls and 64.8 per cent for boys), and for the second stage (13–15 years) was 20.6 per cent (15.4 per cent for girls and 26 per cent for boys). The Committee also notes that in its concluding observations of May 2007 (CRC/C/MLI/CO/2, paragraph 60), the Committee on the Rights of the Child expressed concern at the high child illiteracy rates, the low level of qualification of teachers and the low number of teachers, the high pupil-to-teacher ratio, the insufficient number of adequate installations, the high drop-out and repetition rates, particularly of girls, the lack of information on vocational training and the type of education given in Koranic schools. Despite the Government's efforts, the Committee is deeply concerned at the persistently low rates of school enrolment. ***Considering that education contributes to preventing children from being engaged in the worst forms of child labour, the Committee strongly encourages the Government to step up efforts to improve the working of the education system, in particular by improving school enrolment rates and reducing the drop-out rates, particularly of girls, and by taking measures to integrate Koranic schools into the national education system. It requests the Government to provide information on the results obtained.***

*Article 8. Cooperation.* 1. *Regional cooperation.* With reference to its previous comments, the Committee notes that the Government has signed bilateral cooperation agreements on cross-border trafficking in children with Burkina Faso, Côte d'Ivoire, Guinea and Senegal. It also notes that, as well as the Multilateral Cooperation Agreement to Combat Child Trafficking in West Africa, signed in July 2005, Mali signed the Abuja Multilateral Cooperation Agreement in 2006. It notes that, according to the Government, the mobile security brigades have carried out patrols in the border regions between Mali and Burkina Faso, Côte d'Ivoire and Senegal. Furthermore, according to the ILO/IPEC activity reports for 2007 on the LUTRENA project, standing committees to oversee the multilateral agreements between Mali and Burkina Faso and Mali and Guinea met in November 2006. They recommended in particular: the organization of advocacy campaigns on both sides of the border in the regions concerned, the adoption of identical travel documents and the development of a joint handbook of procedures for repatriation and rehabilitation measures. ***The Committee requests***

*the Government to state whether, in the implementation of these agreements, there have been exchanges of information with other signatory countries allowing: (1) persons working in child trafficking networks to be apprehended and arrested; (2) children trafficked in border areas to be detected and intercepted.*

2. *Poverty reduction.* The Committee notes the information from the Government that a Poverty Reduction Strategy Paper (PRSP) has been adopted and that it takes account of child labour problems as cross-cutting issues, placing them in an overall framework for improving the situation of children and enhancing the role of the family. *Noting that poverty reduction programmes contribute to breaking the poverty cycle, the Committee requests the Government to provide information on the measures it has taken in implementing the PRSP to eliminate the worst forms of child labour, and particularly to secure the effective reduction of poverty among children who are sold and trafficked and subjected to forced begging.*

The Committee is addressing a request concerning other points directly to the Government.

## Mauritania

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

The Committee notes the Government's report. It also notes the comments made by the International Trade Union Confederation (ITUC). *The Committee requests the Government to supply information on the following points.*

*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 ITUC to the effect that the Ministry of Labour, without exception, authorized 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. The Committee noted that the Government, in its initial report submitted to the Committee on the Rights of the Child in January 2000 (CRC/C/8/Add.42, paragraphs 327 and 328), stated that, in order to tackle the economic exploitation of children, it had adopted important measures including the implementation of a national employment policy and a national plan for the promotion of the child.

The Committee notes that the ITUC indicates in its comments that Mauritania is witnessing a large-scale expansion of child labour, mostly involving precarious conditions. It notes that, according to the Government's 2004 study on child labour in Mauritania, undertaken in collaboration with UNICEF, some 90,000 children under 14 years of age work in the country, slightly over 40 per cent of whom are girls. The study shows that poverty is one of the factors in child labour. The Committee notes the Government's information that sectoral studies will be conducted in the informal sector in Kiffa and in some areas of Nouakchott to identify children who are working and seek, with the employers, to establish possibilities for training, education and integration.

The Committee notes 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 establish remedial courses for children who have never been to school or who have abandoned their studies. The Committee notes that, according to UNESCO statistics, 72 per cent of children, both girls and boys, attend primary school whereas only 14 per cent of girls and 17 per cent of boys are in secondary education. It notes that the Government has drawn up a national employment strategy and also a plan of action in this field.

The Committee notes that the number of child workers increased from 68,000 to 90,000 between 2000 and 2004. Moreover, despite the Government's efforts, the Committee is deeply concerned at the persistence of low school attendance rates. It observes that poverty is one of the prime causes of child labour and when it combines with a deficient education system, it hampers children's development. *In view of the fact 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 school attendance rate and reducing the school drop-out rate, especially among girls. It also asks the Government to step up its efforts to combat child labour by reinforcing the measures enabling child workers to be integrated in the school system, whether formal or informal, or in apprenticeships or vocational training as long as minimum age requirements are met. Moreover, the Committee hopes that the studies mentioned by the Government will be conducted as soon as possible. It requests the Government to supply information on the results of the studies, once they are completed, by providing, for example, statistical data disaggregated by sex and age group on the nature, extent and trends of child labour and the employment of young persons working below the minimum age specified by the Government at the time of ratification, as well as extracts from reports of the inspection services.*

The Committee is also raising a number of other matters in a direct request to the Government.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's report. It also notes the comments of the International Trade Union Confederation (ITUC). *The Committee requests the Government to provide information on the following points.*

*Article 3 of the Convention. The worst forms of child labour. Clause (a). Slavery or practices similar to slavery. 1. Sale and trafficking of children.* In its previous comments, the Committee noted the adoption of Act No. 025/2003 of 17 July 2003 on the repression of the trafficking of persons. It also 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 indicated that it recognized the Government's efforts to stop cases of trafficking of children to Arab countries. The Committee requested the Government to provide information on the measures taken in this regard.

In its comments, the ITUC indicates that in recent years several networks for the trafficking of children to Arab Gulf countries have been developed, in which the child victims do not benefit from any form of protection. Indeed, even though the State is informed of these practices and often knows the persons who are active in the networks, no steps have been taken against them. The Committee notes 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 countries in the subregion or whether children are exploited on 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 slavery and are forced to beg on a daily basis. According to the UNICEF report, the internal trafficking of children also exists, including the phenomenon of child *talibés* from rural areas who beg in the streets of Nouakchott.

The Committee observes that Mauritania appears to be a country of origin for the trafficking of children for labour exploitation. ***It 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 against sale and trafficking for labour exploitation. The Committee also requests the Government to provide information on the effect given in practice to Act No. 025/2003 of 17 July 2003 on the repression of the trafficking of persons, including statistics on the number and nature of the offences reported, investigations conducted, prosecutions, convictions and penalties imposed.***

*2. Forced or compulsory labour. Begging.* The Committee noted previously 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 the *talibés* who are exploited by their *marabouts*. It also noted the statement 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 suggest that street children tend to be beggars who give daily account of their begging activities to their *marabouts*. The study also indicated that *talibé* children are a new phenomenon in Mauritania which is limited in scope. The Committee requested the Government to take the necessary measures to protect street children and *talibés* from the worst forms of child labour.

The Committee notes that, according to the UNICEF report on the trafficking of persons, with particular reference to women and children, in West and Central Africa, the internal trafficking of children exists particularly child *talibés* from rural areas who beg in the streets of Nouakchott. The Committee notes that section 42(1) of Ordinance No. 2005-015 on the penal protection of the child provides that the act of causing or directly employing a child in begging is punishable by imprisonment from 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 is punishable by imprisonment for eight months or a fine of between 180,000 and 300,000 ouguiyas. The Committee expresses concern at the use of children *for purely economic purposes*, namely the use of children as a source of labour by certain *marabouts*. ***It requests 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. The Committee also requests 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 requests 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.***

*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.* The Committee notes that, according to UNICEF information, children who have been the victims of trafficking, particularly to the United Arab Emirates (UAE) to work as camel jockeys, have recently been repatriated to Mauritania and are receiving education in a special school for former jockeys. ***It 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 provide information on the results achieved.***

*Article 8. International cooperation. 1. Sale and trafficking of children.* The Committee notes that, according to UNICEF information, Mauritania and the UAE, in collaboration with UNICEF, have established a programme to assist child victims of trafficking exploited as camel jockeys. In the context of this programme, the Government of the UAE has offered financial compensation to Mauritanian families and proposed income-generating activities. The Committee takes due note of this information. ***It requests the Government to provide fuller information on the transboundary programme between Mauritania and the UAE, with an indication of whether: (1) individuals operating in networks for the trafficking of children have been identified and arrested; and (2) child victims of trafficking have been identified and intercepted.***

2. *Poverty reduction.* The Committee noted previously that, in its initial report to the Committee on the Rights of the Child in January 2000 (CRC/C/8/Add.42, paragraph 331), the Government indicated that it had established a national plan to combat poverty. It also noted that, in its concluding observations of November 2001 on the Government's report (CRC/C/15/Add.159, paragraphs 7 and 14), the Committee on the Rights of the Child noted with concern that economic and social difficulties facing the State party had a negative impact on the situation of children, particularly in rural and remote areas. The Committee requested the Government to provide information on the impact of the national plan to combat poverty on the elimination of the worst forms of child labour. The Committee notes the Government's indication that it has included a series of actions for children in the strategic framework to combat poverty (CSLP), which is the guiding standard for sectoral macroeconomic policies and other medium- and long-term development policies. ***Noting that poverty reduction programmes contribute to breaking the cycle of poverty, the Committee requests the Government to provide information on the measures adopted in the context of the implementation of the CSLP with a view to eliminating the worst forms of child labour, particularly with regard to the effective reduction of poverty among child victims of sale and trafficking and of forced begging.***

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

## Mauritius

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1990)**

The Committee notes the Government's report. ***It requests the Government to provide further information on the following points.***

*Article 2, paragraph 3, of the Convention. Age of completion of compulsory schooling.* The Committee had previously noted that the Education Act was amended by Act No. 44 of 8 December 2004 to extend compulsory schooling to 16 years of age. It had noted, however, that the amendment of the Labour Act in 2004 did not concern the minimum age for employment, which remained at 15 years. The Committee had encouraged the Government to take the necessary measures to raise to 16 the minimum age for admission to employment in order to link it with the age of completion of compulsory schooling. The Committee notes with satisfaction that the Labour Act was amended in 2006 in order to raise the minimum age for employment to 16 years (section 3(a) of the Labour (Amendment) Act 2006 – Act No. 26 of 2006).

*Article 3, paragraph 3. Authorization to undertake hazardous work as from 16 years.* The Committee had previously noted that sections 2 and 28 of the Occupational Safety, Health and Welfare Act No. 34 of 1988 state that 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, without delay, 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. The Committee notes the Government's information that provisions regarding the minimum age for admission to hazardous work have been included in section 8 of the Occupational Safety and Health Bill of 2005, which will soon be adopted. The Committee notes with interest that, by virtue of section 2 of this Bill, a "young person" is defined as a person between 16 and 18 years of age. ***The Committee hopes that the Occupational Safety and Health Bill of 2005 will be adopted soon. It requests the Government to inform it of any progress made towards the adoption of this Bill.***

*Article 9, paragraph 1 and Part III of the report form. Penalties. 1. Labour inspectorate.* For a certain number of years the Committee had observed that, while some cases of violation of child employment were detected by the labour inspectorate, no penalties were imposed on the employers acting in breach of the legislation.

The Committee notes the Government's information that, during the period under review, out of 4,152 inspection visits carried out in connection with the employment of children, two cases of child employment were detected involving two children. The employment of these children was stopped and the employers concerned were warned accordingly. Prosecution is being envisaged in one of the cases. Moreover, in Rodrigues, 94 inspections were carried out, but no case of child employment was detected. The Committee notes the Government's indication that, as of May 2007, the Inspection and Enforcement Division of the Ministry of Labour, Industrial Relations and Employment has been enlarged with new staff.

While noting that only two cases of violations of child employment were detected by the labour inspectorate, the Committee once again observes that persons who employ children in breach of the provisions giving effect to the Convention are not prosecuted, as a rule, as far as 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. ***It accordingly 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 is prosecuted and that adequate penalties are imposed. It asks the Government to provide information on the types of violations detected by the labour inspectors, the number of persons prosecuted and the penalties imposed.***

2. *Ombudsperson for Children.* The Committee had previously requested the Government to provide information on the activities of the Ombudsperson for Children. The Committee notes the information contained in the report by the Ombudsperson for Children supplied by the Government. According to this report, the Ombudsperson for Children's Office has a small staff including three investigators who do not normally undertake field work. Cases which need to be investigated in the field are usually managed by the Child Development Unit (CDU) of the Ministry of Women's Rights, Child Development, Family Welfare and Consumer Protection. Cases are sometimes referred to the minors brigade of the police. The report indicates that the Ombudsperson for Children's Office has had to deal with very few cases of child labour which were all referred to the CDU.

The Committee is also addressing a direct request to the Government concerning other points.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the Government's report.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee had previously observed that the relevant legislation did not prohibit the trafficking of children under 18 years of age for purposes of labour or sexual exploitation. It had requested the Government to take the necessary measures to ensure that all aspects of child trafficking, such as the recruitment, transportation, transfer, harbouring or receipt of children for the purpose of labour or sexual exploitation are prohibited, and that appropriate penalties are provided for in the national legislation. The Committee notes with satisfaction the Government's information that in December 2005 the Child Protection Act was amended in order to include provisions prohibiting all cases of child trafficking. It notes that section 13A(1) states that any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation commits an offence and shall be liable, on conviction, to penal servitude for a term not exceeding 15 years. Section 13A(7) specifies that "exploitation" includes the exploitation of prostitution of children or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery.

*Clause (b). Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee had expressed its concern at the commercial sexual exploitation of children in Mauritius and Rodrigues Island. It had also noted that according to a study carried out in 2001 by UNICEF and the Ministry of Women's Rights, Child Development and Family Welfare and Consumer Protection (MWCFCP), more than 2,600 children and 3,900 adults were involved in prostitution. The Committee had consequently observed that, although the commercial sexual exploitation of children was prohibited by section 14 of the Child Protection Act, and sections 86(2) and 251 of the Criminal Code (Amendment) Act of 1998, it remained an issue of concern in practice.

The Committee notes with interest that various bodies and institutions, especially the police, the Child Development Unit (CDU), the *Brigade des Mineurs* have taken a number of measures in order to prevent and combat the commercial sexual exploitation of children.

1. *Police.* The Committee notes the Government's information that the police is carrying out a number of activities, such as training, raids, surveillance, partnership with other institutions, in order to prevent and combat the commercial sexual exploitation of children. In particular, between 2005 and 2007, the police has undertaken various training courses on the trafficking and commercial sexual exploitation of children directed at police officers and specialized units (such as the Criminal Investigation Department, the Police Prosecutors Unit, the Passport and Immigration Office, the Anti Drug Smuggling Unit) in order to provide them with the necessary knowledge, skills and techniques to investigate such cases. Moreover, in 2005 and 2007, the Police Family Protection Unit organized various lectures on child abuse and the commercial sexual exploitation of children directed at children in primary and secondary schools and of various youth centres and communities, as well as adults.

2. *Child Development Unit.* The Committee notes the Government's information that the Child Development Unit (CDU) of the MWCFCP has specialized staff to protect children under the Child Protection Act. According to the Government's report, the CDU has set up a Community Child Protection Programme to ensure the community involvement in the fight against the commercial sexual exploitation of children. This Programme (previous Child Watch Network) consists of a forum set up at the district level in order to ensure community development regarding child protection and welfare. Moreover, the CDU has taken other measures to combat the commercial sexual exploitation of children, which include: (a) setting up a residential drop-in centre to cater for victims of commercial sexual exploitation and to enable their reintegration into society through psychological treatment and support; (b) organizing the "Training of Trainers Programme" on the commercial sexual exploitation of children; (c) supplying a substitute family environment to children abandoned or at risk; (d) organizing workshops on the identification and reporting of child abuse cases, with a view to increasing awareness of child abuse and commercial sexual exploitation of children. The Committee notes the Government's information that the CDU has been provided with new staff including family welfare and protection officers, family support officers and police officers.

3. *Brigade pour la protection des Mineurs.* The Committee notes the Government's information that the *Brigade pour la protection des Mineurs* has been reinforced in order to ensure a close monitoring of all suspicious places. It also notes that, in 2006 and 2007, the *Brigade* organized a number of lectures in order to sensitize children in primary and

secondary school and persons in various community youth centres, to the issue of child abuse, including the commercial sexual exploitation of children.

*Article 6. Programmes of action to eliminate the worst forms of child labour. 1. National plan of action to combat the commercial sexual exploitation of children.* The Committee had previously noted that in 2003 the Government launched a two-year National Plan of Action to Combat the Commercial Sexual Exploitation of Children (NPA on CSEC). It had observed that one of the objectives of the NPA was to provide support and rehabilitation to child victims of commercial sexual exploitation and other forms of exploitation.

The Committee notes the Government's information that an evaluation of the NPA on CSEC was carried out in May 2005 to assess the progress made after two years of implementation. The main results include: (a) the signing of a Protocol of Collaboration by stakeholders involved; (b) the development of the "Training of Trainers Programme" for 40 community leaders and social workers; (c) other various training programmes on the commercial sexual exploitation of children; (d) various sensitization campaigns on the commercial sexual exploitation of children; (e) the adoption of a Protocol of Assistance to Victims of Sexual Abuse (valid since April 2006) laying down the correct procedures to be adopted by the police and other officers to ensure prompt assistance to victims of sexual abuse, including the commercial sexual exploitation of children; (f) the rehabilitative measures provided by the drop-in centre for child victims of commercial sexual exploitation (since 2003 the centre dealt with 459 cases); (g) the adoption by the police of new and more customer-friendly techniques for questioning and counselling victims; (h) the organization by the CDU, in collaboration with the National Children's Council and the Ombudsperson for Children's Office of the campaign "16 days, 16 rights" to sensitize the public about children's rights; (i) other various sensitization measures at the level of primary and secondary schools.

*2. Subregional network for preventing and combating the commercial sexual exploitation of children.* The Committee had previously requested the Government to provide information on the launching of the subregional network for preventing and combating the sexual exploitation of children as well as on the activities of the inter-ministerial committee on child prostitution. The Committee notes the Government's information that the idea of creating a subregional network for preventing and combating the sexual exploitation of children has been successful. The issue was discussed at the Southern African Development Community (SADC) Council held in Mauritius on 24–25 February 2005. During the SADC Council, it was noted that the region is facing a problem with child abuse, and especially with the commercial sexual exploitation of children, and found that there is a need to protect children on a regional basis. In line with the Addendum on the Prevention and Eradication of Violence Against Women and Children, the Council directed the Secretariat to organize a workshop to deliberate on the protection of children from sexual abuse and made appropriate recommendations to the Integrated Council of Ministers.

The Committee is also addressing a direct request to the Government concerning other points.

## Mexico

### ***Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1956)***

The Committee takes note of the Government's report.

*Article 2, paragraph 1, of the Convention. Period during which night work is prohibited.* In its previous comments, the Committee noted that section 175 of the Federal Labour Act prohibited night work for young persons under the age of 18 in industry. It also noted that section 60 of the Act defined night work as work performed between 8 p.m. and 6 a.m., i.e. *a period of ten hours*. The Committee pointed out that the national legislation did not give effect to *Article 2, paragraph 1*, of the Convention, which defines "night" as *a period of 12 consecutive hours*. The Government initially indicated that Mexico's labour legislation did not define "night" as *a period of at least 12 consecutive hours* and was inconsistent with the provisions of the Convention. The Committee took note of the draft legislation to supplement section 175 of the Federal Labour Act (prohibition on night work for persons under 18 years of age) which gave effect to the Convention. However, the Government thereafter stated that there was no discrepancy between the national legislation and this provision of the Convention, and that no such amendment to the Federal Labour Act was envisaged.

The Committee takes note of the information sent by the Government in its report to the effect that the labour inspection services have not detected any night work by minors. The Committee notes with regret that although it has made repeated requests since 1972, the Government has not yet taken the necessary legislative measures to give effect to the Convention. It again points out to the Government that section 60 of the Federal Labour Act, by providing that *work performed between 8 p.m. and 6 a.m. is night work*, establishes a *period of ten hours*, and is accordingly inconsistent with *Article 2, paragraph 1*, of the Convention, which requires a *period of 12 consecutive hours*. ***The Committee urges the Government to take legislative measures to remedy this state of affairs as soon as possible and requests it to report all progress made in this regard.***

[The Government is asked to reply in detail to the present comments in 2008.]

## **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the Government's report.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and traffic of children for commercial sexual exploitation.* 1. *Federal legislation.* In its previous comments, the Committee noted the observations of the International Trade Union Confederation (ITUC) reporting the trafficking of young girls within the country and abroad for the purposes of sexual exploitation, including forced prostitution. The Committee noted that, according to a study carried out in six Mexican cities with the support of UNICEF, around 16,000 boys and girls were victims of commercial sexual exploitation. It noted that a study carried out by ILO/IPEC, the Secretariat for Labour and Social Assistance and the National Social Sciences Institute corroborated the figures referred to above and added that around 5,000 children were the victims of this form of exploitation solely in the Federal District of Mexico. The Committee noted that reforms of the legislation were in progress and requested the Government to provide information in this respect.

The Committee notes with satisfaction the Decree of 27 March 2007 which amends, supplements and repeals certain provisions of the Federal Penal Code, the Code of Penal Procedure and the Federal Act to Combat Organized Crime in relation to the sexual exploitation of children. In particular, it notes that sections 205 and 205bis of the Penal Code penalize the trafficking of persons under 18 years of age for sexual and economic exploitation. The Committee also notes that the Government is participating in the ILO/IPEC project entitled "Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children (CSEC) and the Protection of CSEC Victims in Mexico" and that progress has been achieved in the context of its implementation. It however observes that, although the Government has taken several measures to combat the sale and trafficking of children for commercial sexual exploitation, the problem still exists in practice. In this respect, it refers to the concluding observations of the Committee on the Rights of the Child on the third periodic report of Mexico of June 2006 (CRC/C/MEX/CO/3, paragraph 64), in which it indicated that it remained concerned about the extent of the sexual exploitation, trafficking and abduction of children in the country. The Committee of Experts, however, notes a communication of the Special Rapporteur on the sale of children, child prostitution and child pornography, who visited the country from 4 to 14 May 2007, indicating that there is a consensus between the public authorities and civil society organizations that the sexual exploitation of children and the trafficking of minors for this purpose constitute a serious problem which has to be addressed. The Committee appreciates the measures adopted by the Government to prohibit and eliminate this worst form of child labour and it considers these measures as an affirmation of the political will to develop strategies to combat this problem. ***It strongly encourages the Government to redouble its efforts to ensure the protection of children under 18 years of age against sale and trafficking for sexual exploitation, including prostitution. Furthermore, the Committee requests the Government to provide information on the effect given in practice to the new provisions, including statistics on the number and nature of the infringements reported, the investigations undertaken, prosecutions, convictions and the penal sanctions applied.***

2. *State legislation.* The Committee notes the studies provided by the Government on the penal legislation respecting the commercial sexual exploitation of children. It notes that, according to the information contained in the ILO/IPEC activity reports for 2007 on the project "Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children (CSEC) and the Protection of CSEC Victims in Mexico", draft amendments to the Penal Codes in the states of Baja California, Guerrero and Chihuahua have been approved. ***The Committee hopes that the draft amendments to the Penal Codes will be adopted in the near future and requests the Government to provide information on any progress achieved in this respect.***

*Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.* The Committee notes with interest that the Decree of 27 March 2007 contains provisions penalizing the following crimes: acting as an intermediary for the prostitution of persons under 18 years of age (sections 206 and 206bis); pornography involving persons under 18 years of age (sections 202 and 202bis); and sexual tourism involving persons under 18 years of age (sections 203 and 203bis). ***It requests the Government to provide information on the effect given to these provisions in practice, including statistics on the number and nature of the violations reported, investigations undertaken, prosecutions, convictions and the penal sanctions applied.***

*Clause (c). Use, procuring or offering of a child for illicit activities.* The Committee noted previously the ITUC's indication that children were engaged in begging. It requested the Government to provide information on the effect given to section 201 of the Federal Penal Code which penalizes the incitement of persons to engage in begging. ***Noting the absence of information, the Committee once again requests the Government to provide information in this respect, particularly with regard to the application of sanctions in practice, and to provide, among other information, reports on the number of convictions.***

*Article 7, paragraph 1. Sanctions.* With reference to its previous comments, the Committee notes the detailed information provided by the Government concerning the Internet Police Unit. It notes in particular that, between January 2005 and June 2007, over 2,500 sites containing child pornography were deactivated. ***It encourages the Government to pursue its efforts in this respect.***

*Article 7, paragraph 2. Effective and time-bound measures.* The Committee notes the detailed information provided by the Government in its report on the measures taken to combat the sexual commercial exploitation of children. It notes

in particular the training activities for officials of the public authorities (labour inspection, police forces, immigration service), the awareness-raising campaigns for the population and the publication of educational materials.

*Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour and assistance for the removal of children from these worst forms.* 1. *Commercial sexual exploitation.* With reference to its previous comments, the Committee notes that, according to the information contained in the ILO/IPEC activity reports for 2007 on the project “Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children (CSEC) and the Protection of CSEC Victims in Mexico”, measures have been taken to prevent 245 children from being engaged in this worst form of child labour or to remove them from this activity since 2005. It also notes that around 90 children have been reintegrated into the school system and over 980 children have benefited from the project since the beginning of its activities. Furthermore, the Committee notes the information provided by the Government concerning the measures taken for the rehabilitation and social integration of child victims, the assistance provided to their families and the number and location of reception centres in the various states of the country. ***The Committee requests the Government to continue providing information on the measures adopted in the context of the implementation of the ILO/IPEC project with a view to: (1) preventing children under 18 years of age from becoming victims of commercial sexual exploitation; and (2) providing the necessary and appropriate direct assistance for the removal of children from this worst form of child labour and for their rehabilitation and social integration. Furthermore, it requests the Government to provide information on the specific medical and social follow-up programmes formulated and implemented for the victims of this worst form of child labour.***

2. *Education.* In its previous comments, the Committee noted the indication by the ITUC that 1.7 million children of school age are unable to receive education as poverty makes it imperative for them to work. The ITUC added that, in the case of indigenous children, access to education is difficult as teaching is normally provided only in Spanish and many indigenous families only speak their mother tongue. The Committee noted the efforts made by the Government, particularly in the context of the implementation of the “Opportunities” programme developed by the Ministry of Social Development, which provides children and young persons living in poverty with full and free access to education and to health services.

The Committee takes due note of the information provided by the Government that over 5,290,000 children benefited from the “Opportunities” programme in 2005 and 2006 and that it hopes to increase the number of grants provided at the secondary and higher levels to cover 1.24 million girls and 1.18 million boys for the school year 2006–07. The Committee however notes that, in its concluding observations of June 2006 (CRC/C/MEX/CO/3, paragraph 56), the Committee on the Rights of the Child expressed concern at continuing low school enrolment rates, especially among migrants and indigenous children, and at the high drop-out rates, especially among rural, indigenous and migrant children. ***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 increase the school enrolment rate and to reduce the drop-out rate, particularly for rural, indigenous and migrant children. It requests the Government to provide information on the results achieved.***

3. *Tourism.* The Committee notes the information contained in the 2007 activities report of ILO/IPEC on the project “Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children (CSEC) and the Protection of the CSEC Victims in Mexico” that over 800 professionals in tourism have been covered by awareness raising concerning the commercial sexual exploitation of children, including sexual tourism. ***As the country benefits from a certain level of tourism, the Committee encourages the Government to continue its awareness-raising activities for actors directly linked to the tourist industry.***

*Clause (d). Children at special risk.* 1. *Children in agricultural work and marginal urban activities.* The Committee previously noted the ITUC’s indication that the majority of children who work are engaged in agriculture or informal urban activities. The Committee notes the information provided by the Government on the results achieved in the context of the implementation of the programme to prevent and eliminate child labour in the marginal urban sector and the Programme to promote the rights of girls and boys, daily child workers in the agricultural sector and the prevention of child labour (PROCEDER) in 2005 and 2006. In particular, it notes that, in the context of the Programme on marginal urban activities, over 132,000 child workers and 162,700 children at risk have benefited from the programme, of whom 10,976 have received an educational grant from the System for the Integral Development of the Family (DIF), and 1,121 have received a DIF training grant. It further notes that, in the context of the PROCEDER programme, over 557,475 children have benefited directly from the programme, 2,873 children have received an education grant and 24 schools and a rehabilitation centre have been constructed. ***The Committee encourages the Government to continue its efforts to protect these children from the worst forms of child labour.***

2. *Street children.* The Committee previously noted the study of the DIF, which showed that 114,497 children under 17 years of age worked and lived in the streets and that, solely in the city of Mexico, which was not covered by the study, there are 140,000 young persons working in the streets. The study added that 90 per cent of the children working in the streets did so on their own account and provided for the subsistence of their families. The Committee notes the information provided by the Government relating to the results obtained in the context of the implementation of the Programme of Prevention and Assistance to girls, boys and young persons living in the streets. It notes that, between 2001 and 2007, around 189,620 children have benefited from this programme. However, it notes that, according to the

concluding observations of the Committee on the Rights of the Child in June 2006 (CRC/C/MEX/CO/3, paragraph 68), although the number of street children has fallen in recent years, it remains high and the measures adopted to prevent this phenomenon and protect the children involved are inadequate. ***The Committee therefore requests the Government to redouble its efforts to ensure that young persons under 18 years of age working on their own account, such as street children, are not engaged in hazardous types of work. It also requests the Government to continue providing information on the impact of this programme and the results achieved.***

*Article 8. International cooperation.* 1. “Programme OASIS”. Further to its previous comments, the Committee notes the information provided by the Government concerning the cooperation between the United States and Mexico in the context of the “Programme OASIS”, it notes that a “Programme OASIS” conference was held in San Antonio, Texas, in August 2007 and that the authorities of the two countries have agreed to strengthen their cooperation to punish those responsible for the unlawful trafficking of persons, particularly children, and to extend the programme to other frontier points. ***The Committee requests the Government to indicate (1) the number of persons who are charged and found guilty as a result of the implementation of this programme; and (2) the number of child victims of trafficking intercepted in frontier areas.***

2. *Border between Mexico and Guatemala.* With reference to its previous comments, the Committee notes the information provided by the Government that the National Institute for Migration (INM) in 2006 made over 1,522 complaints concerning the unlawful trafficking and smuggling of persons. Between January and March 2007, the INM made over 353 complaints, of which 39 were referred to the courts; of these, 26 have been set aside and 462 are under examination. ***The Committee requests the Government to provide information on convictions and the penalties imposed as a result of the complaints made by the INM against persons working in networks engaged in the unlawful trafficking and smuggling of children.***

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

## Morocco

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2000)***

The Committee takes note of the Government’s report.

*Article 1 of the Convention. National Policy.* The Committee notes the Government’s information that a National Action Plan for Children (2006–15) (PANE) has been adopted, a major component of which is devoted to combating child labour. ***The Committee requests the Government to provide information on the measures taken to abolish child labour in implementing the abovementioned Plan.***

*Article 2, paragraphs 1 and 3. Scope of application and compulsory schooling.* The Committee noted previously 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 persons working on their own account. It nonetheless noted that according to the report “Understanding children’s work in Morocco” prepared by the ILO, UNICEF and the World Bank in March 2003, (pp. 2–22), 85 per cent of working children under 14 years of age were in agriculture, where they worked for their families and not for wages. The commerce sector, which employs many children in urban areas, likewise included a large number of children working for their families without wages (59 per cent) and a high proportion of self-employed workers (around 26 per cent of children). The Committee asked the Government to indicate the measures taken or envisaged to ensure that the protection established by the Convention is secured for these children.

In its report, the Government indicates that the provisions of the Labour Code apply to all sectors, including agriculture and crafts. It further indicates that, although the Labour Code does not protect children working on their own account, they 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 subject to penalties. The Government states that it has made considerable progress as regards the education system and has implemented national action programmes to combat school drop-out. It also gives countrywide statistics showing the child enrolment rate for 2003–04: 92.2 per cent for the 6 to 11 years age group, 68.8 per cent for the 12 to 14 years age group and 42.9 per cent for the 15 to 17 years age group. While taking due note of this information and of the progress made in terms of school enrolment, particularly among children from 6 to 11 years, the Committee observes that the enrolment rate for children in the 12 to 14 years group shows that a number of them leave school before reaching the minimum age for admission to employment and are found on the labour market. ***The Committee considers that education is one of the most effective means of combating child labour, and requests the Government to redouble its efforts to improve the school attendance rate, particularly among children aged from 12 to 14 years, in order to prevent them from working, particularly on their own account. In this regard, it invites the Government to envisage the possibility of assigning to labour inspectors special duties regarding children working in the informal sector.***

*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 took note of the information provided by the International Trade Union Confederation (ITUC) to the effect that child labour was common in the informal craft industry,

generally in small family workshops producing carpets, pottery, and articles of wood and leather. It also noted that, according to the report “Understanding children’s work in Morocco” (see pp. 19, 20, 22 and 23), some 372,000 children aged from 7 to 14 years – 7 per cent of the reference group – worked; for the 12 to 14 age group, 18 per cent of children were economically active. Of children who worked, 87 per cent were in rural areas, where they were found in the agricultural sector. In urban areas, children were engaged in the textiles, commerce, repairs and domestic service sectors. The average working time of these children was 45 hours a week, with substantial variations depending on the sector.

The Committee takes due note of the detailed information sent by the Government on the measures it has taken to abolish child labour, particularly by implementing a Programme to Combat Child Labour in the Crafts Sector in Marrakesh, similar to the one in Fez, the objective of which is to prevent child labour in this type of work, remove children who engage in it and ensure that they are reintegrated into formal schooling. It also notes the detailed information sent by the Government about the Vocational Training Programme based on apprenticeship in the crafts sector, which has enabled a large number of children to receive training. The Committee further notes from activity reports on the ILO/IPEC Project to Abolish Child Labour in French-speaking Africa for 2006, that a number of activities have been carried out, including measures to build capacity in various government institutions and to raise awareness about the problems of child labour. As to children in domestic work, the Committee notes that a Bill setting a minimum age of 15 years for admission to this type of employment is before Parliament and a special budget has been established for activities in this sector. The Committee notes that, according to the Government, since the start up of the ILO/IPEC project, which covers activities, inter alia, in commerce, services, agriculture and crafts, more than 8,090 children have been removed from work and granted viable alternatives, and more than 15,600 children have been prevented from taking up work.

The Committee much appreciates the efforts and measures undertaken by the Government to abolish child labour, and considers that they reflect a political resolve to develop strategies to overcome these problems. It notes, however, that application of the legislation on child labour appears to be difficult and that, in practice, child labour continues to be a problem in Morocco. ***The Committee therefore strongly encourages the Government to pursue its efforts to combat child labour and requests it to continue to provide information on the implementation of the abovementioned projects and on the results obtained in terms of the gradual elimination of child labour. It also asks the Government to provide information on the manner in which the Convention is applied in practice, providing, inter alia, details of the number of inspection visits conducted each year, the number and nature of the offences reported and the penalties applied.***

*Article 9, paragraph 1. Sanctions.* The Committee noted previously that section 151 of the Labour Code provides that employment of a child under 15 years of age in breach of section 143 of the Code, is punishable by a fine of 25,000 to 30,000 dirhams (US\$3,000 to 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 to 60,000 dirhams (US\$6,000 to 7,200). It nonetheless noted that sections 150 and 183 of the Labour Code provide for a fine of 300 to 500 dirhams (US\$36 to 60) for breaches of section 147 (banning 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). Considering that the fines set in sections 153 and 183 of the Labour Code are derisory, the Committee requested the Government to take steps to ensure that penalties for employing children in breach of the law are adequate and dissuasive.

In its report, the Government states that the Labour Code has increased the amount of fines for breach of provisions on the protection of child workers. The Committee points out that although the penalties provided for in section 151 of the Labour Code are heavier, it considers that those set in sections 150 and 183 are not adequate or dissuasive enough to ensure application of the Convention’s provisions on hazardous work. ***The Committee therefore urges the Government to take the necessary measures to ensure that dissuasive and effective enough penalties are set for breaches of the Labour Code’s provisions on hazardous work.***

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

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)***

The Committee takes note of the Government’s report.

*Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (d). Forced or compulsory labour and hazardous work. Domestic work of children.* In its previous comments, the Committee took note of information from the International Trade Union Confederation (ITUC) to the effect that the statutory prohibition on forced labour is not applied effectively by the Government. Domestic work by children under conditions of servitude is a common practice in the country: parents sell their children, sometimes as young as 6 years of age, to work as domestic servants, and families adopt young girls to use them as servants. The ITUC also stated that about 50,000 children, largely girls, are working as domestic servants. Of these, some 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 ITUC further indicated that special legislative measures are needed to prohibit domestic servitude. The Government stated in reply that a bill on conditions for hiring domestic staff had been drafted by the Department of Employment and that other ministerial departments, non-governmental organizations and the social partners were to be consulted before the text was adopted. The Committee noted that section 10 of the Labour Code prohibits forced labour. It further observed that section 467-2 of the Penal Code prohibits the forced labour of children under 15 years of age.

The Committee notes the information provided by the Government that following a tripartite seminar held at the end of July 2006, a bill on domestic work was adopted and is in the process of validation. It sets the minimum age for admission to this type of employment at 15 years, establishes working conditions and provides for supervisory measures and penalties. The Committee further notes that awareness campaigns have been run to highlight the ills of domestic work for children, particularly “*les petites bonnes*”. It further notes from activity reports for 2007 on the ILO/IPEC project to “Combat child labour in Morocco by creating an appropriate environment in the country and providing for direct intervention against the worst forms of child labour in rural areas”, a special budget has been established for activities regarding this type of employment.

The Committee duly notes the measures taken by the Government to regulate *domestic work*, i.e. household tasks carried out by a non-member of the household who is legally old enough to work. The Committee nonetheless draws the Government’s attention to the fact that the work done by a number of children in Morocco amounts rather to *domestic work of children*, i.e. domestic work carried out by children who have not reached the minimum age for admission to employment or by children who have passed the minimum age but are under the age of 18, who work in conditions that approximate slavery or are hazardous, or who are exploited. The Committee reminds the Government that according to *Article 3* of the Convention, such forms of work are among the worst forms of child labour and are therefore to be eliminated as a matter of urgency pursuant to *Article 1*. It again expresses deep concern at the situation of children who are subjected to forced labour or who work in hazardous conditions in Morocco. ***The Committee urges the Government to step up efforts and take the necessary measures as a matter of urgency to ensure that anyone who uses the domestic labour of children under 18 years of age in the form of forced labour, or who employs children in hazardous work is prosecuted and subjected to effective and dissuasive sanctions. In this respect it requests the Government to provide information on the effect given to the provisions relating to the worst forms of child labour referred to above, including statistics of the number and nature of violations reported, the inquiries held, the legal action taken and the sentences and penalties applied. Lastly, the Committee hopes that the bill on domestic work will be adopted shortly and requests the Government to provide a copy of it as soon as it is adopted.***

*Article 7, paragraph 2. Effective and time-bound measures.* The Committee takes due note of the information provided by the Government to the effect that, as part of the project being implemented by ILO/IPEC to “Combat child labour in Morocco by creating an appropriate environment in the country and intervening directly against the worst forms of child labour in rural areas”, more than 15,633 children (8,423 boys and 7,210 girls) have been prevented from being engaged in one or other of the worst forms of child labour, and 8,099 children (3,941 boys and 4,158 girls), have been removed from work with the offer of viable alternatives. ***The Committee requests the Government to continue to provide information on the action programmes implemented under the ILO/IPEC project, and their impact in terms of protecting children and removing them from the worst forms of child labour in Morocco.***

*Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour, removing children therefrom and ensuring their rehabilitation and integration into society. Child prostitution and sex tourism.* With reference to its previous comments, the Committee notes that in its concluding observations of March 2006 on Morocco’s initial report on 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/MAR/CO/1, paragraphs 15 and 16), the Committee on the Rights of the Child noted an amendment to the Penal Code in 2003 introducing the crime of sex tourism”. It expressed concern, however, at the persistence of child prostitution and sex tourism involving young Moroccans as well as immigrants, especially boys. It recommended that the Government intensify its efforts to tackle the problem of child prostitution, including in the context of sex tourism, by developing a specific strategy targeting the tourist industry including specific messages on child rights and on the existing sanctions against child abusers.

The Government indicates in its report that as part of the National Action Plan for Children (PANE) for the decade 2006–16, a preliminary study on the problems of the sexual exploitation of children was conducted in February 2007 with a view to drawing up a national strategy for preventing and combating the sexual exploitation of children. The Government also states that a report prepared after the study recommends certain measures, including awareness raising among young people and the public in general and the adoption of preventive measures. ***The Committee requests the Government to provide information on the measures taken on these recommendations and the results obtained in: (a) preventing children from falling victim to prostitution, particularly in the context of sex tourism; and (b) providing 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 also requests the Government to indicate whether it plans to take steps to raise the awareness of service providers directly linked to the tourism industry, including associations of hotel owners, tour operators, taxi companies, and owners of bars, as well as restaurants and their employees.***

*Clause (d). Children particularly at risk. Domestic work of children.* In its previous comments, the Committee noted that according to the ITUC and the report on the mission to Morocco of the United Nations Special Rapporteur on the issue of commercial sexual exploitation of children (E/CN.4/2001/78/Add.1, paragraph 10), the physical and sexual abuse of young girls working as housemaids, or “*petites bonnes*”, is among the most serious problems confronting Moroccan children. The Committee takes due note of the National Programme to combat the use of little girls as housemaids (INQAD) implemented as part of the PANE. It notes that various measures are to be taken under this programme to alert the various players about the domestic work of children and to prevent it, in particular by offering

alternatives to domestic work, including the reinforcement of compulsory schooling. *The Committee observes that children, particularly girls, employed in domestic work often fall prey to exploitation, which can take various forms, and that it is difficult to oversee their employment conditions because the work is illegal. It urges the Government to step up efforts to protect these children, particularly from economic and sexual exploitation, and to provide information on the measures taken to this end under the INQAD programme.*

*Article 8. Poverty reduction.* The Committee notes that in its concluding observations on Morocco's initial report of March 2006 on 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/MAR/CO/1, paragraph 34), the Committee on the Rights of the Child noted that the Government, in cooperation of the UNDP Morocco, civil society and several NGOs, has initiated projects aimed at poverty reduction. *The Committee points out that initiatives to reduce poverty contribute to breaking the poverty circle, which is essential to eliminating the worst forms of child labour, and requests the Government to provide information on any notable impact these poverty reduction projects have had in terms of eliminating of the worst forms of child labour.*

The Committee is addressing a request on other matters directly to the Government.

## Nicaragua

### **Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1976)**

The Committee takes note of the Government's report. It notes with interest the adoption of General Act No. 618 on occupational health and safety and Decree No. 96-2007 issuing the regulations thereto. It observes that both contain provisions that apply to medical examination.

*Article 2 of the Convention. Medical examination for admission for employment of children and young persons under 18 years of age.* In its previous comments, the Committee noted that it could be inferred from section 46 of the Ministerial Decision of 24 November 2000 that young persons over 16 years of age may carry out tasks involving the use of pesticides or other chemicals. It observed that the medical examinations established by sections 46 and 48 of the Ministerial Decision of 24 November 2000 deal only with workers whose tasks involve the handling of pesticides or other chemicals, and that under section 50 of the Ministerial Decision, the examination does not take place until 90 days after the work begins. The Committee reminded the Government that the medical examinations established in *Article 2, paragraph 1*, of the Convention are intended to determine whether children and young persons are deemed fit for the tasks they will have to perform and that the examinations must therefore be conducted before admission to employment and regardless of the type of tasks involved, and asked it to take the necessary steps to give effect to the Convention on this point. The Committee notes with satisfaction that Ministerial Agreement No. VGC-AM-002-10-06 of 27 October 2006 issuing a list of dangerous jobs applicable in Nicaragua prohibits the employment of persons under 18 years of age in tasks that involve exposure to chemical pollutants including pesticides or other chemicals.

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

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1976)**

The Committee takes note of the Government's report. It notes with interest the adoption of General Act No. 618 on occupational health and safety and Decree No. 96-2007 issuing the regulations thereto, and that both contain provisions on medical examination. *It requests the Government to provide information on the following point.*

*Article 7, paragraph 2(a), of the Convention. Supervision of the application of the system of medical examination for fitness to work to children engaged on their own or their parents' account.* In its previous comments, the Committee noted with regret that the national legislation contains no provisions to give effect to *Article 7, paragraph 2(a)*, of the Convention, and asked the Government to take the necessary steps to ensure compliance with the Convention on this point. It notes that the Government's report contains no information on the matter. It again points out that pursuant to this provision of the Convention, national laws and regulations must determine the measures of identification to be adopted for ensuring the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried on in the streets or places to which the public have access. *The Committee once again urges the Government to take the necessary steps to ensure that the national legislation provides for the organization of such examinations, in order to give effect to this article of the Convention.*

*With regard to the other provisions of the Convention, the Government is asked to refer to the Committee's comments under Convention No. 77.*

## Niger

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the Government's report. The Committee takes due note of the measures taken by the Government to follow up the recommendations of the High-level Fact-Finding Mission that took place in Niger from 10 to 20 January 2006 further to the request made by the Conference Committee in June 2005. It notes the following measures in particular:

- setting up of a National Committee within the Ministry of Labour for combating the vestiges of forced labour and discrimination, drawing up of a National Plan of Action for combating the vestiges of forced labour and discrimination, and implementation of a support programme for combating forced labour and discrimination;
- setting up of a National Committee within the Ministry for the Promotion of Women and Protection of Children for coordination and monitoring of the national action plan against child trafficking;
- approval of a National Employment Policy Framework document, which takes account of the social and occupational integration of persons at risk;
- drawing up of a Support Programme for the Protection of Children in Danger.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery and practices similar to slavery. 1. Sale and trafficking of children.* In its previous comments, the Committee noted observations by the International Trade Union Confederation (ITUC) alleging the trafficking of girls in Niger for domestic work and sexual exploitation, and trafficking of boys for the purpose of economic exploitation. It also noted that, according to information obtained by the high-level mission, Niger is certainly a *transit country* since its geographical location makes it a hub for trade between North Africa and sub-Saharan Africa. The Committee also observed that Niger's geographical location – i.e. the fact that it shares land borders with seven States (Algeria, Benin, Burkina Faso, Chad, Libyan Arab Jamahiriya, Mali and Nigeria) – places the country at the heart of the region's migratory flows and exposes it to the risk of trafficking, particularly child trafficking, especially as most of the countries with which it shares a land border are themselves affected by trafficking. The Committee also noted that, according to information gathered by the High-level Mission, Niger is both a *country of origin* and a *country of destination* for human trafficking, including the trafficking of children. The mission report also indicated that the trafficking of women and children between the countries of the subregion has increasingly involved Niger, and that the trafficking networks are fed, especially in Niamey, by young persons recruited mainly in Nigeria, Togo, Benin and Ghana, with the promise of a bright professional future, to carry out tasks which are traditionally regarded as demeaning in Niger (domestic work) or which are prohibited on religious grounds (work in bars or restaurants, etc.).

The Committee previously noted that Niger's Association for Human Rights had drafted a bill for the prevention, repression and punishment of trafficking in Niger and asked the Government to take the necessary steps to ensure that the bill was adopted as soon as possible. The Committee notes the Government's statement that the drawing up of the draft bill on the trafficking of children is still under consideration by the competent authorities. The Committee is of the opinion that, in order to combat effectively the worst forms of child labour, especially the sale and trafficking of children, the adoption and application of legislation geared to the problem is essential in addition to the implementation of programmes of action. It reminds the Government that *Article 1* of the Convention provides that 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 sincerely hopes that the Government will take the necessary steps to ensure that the draft bill for the prevention, repression and punishment of trafficking in Niger is drawn up and adopted as soon as possible. It requests the Government to supply information on all progress made in this respect.***

*2. Forced or compulsory labour. Begging.* The Committee previously took note of observations by the ITUC to the effect that children are forced to beg in West Africa, including Niger. For economic or religious reasons, many families entrust their children from the age of 5 or 6 years to a spiritual guide (*marabout*), with whom they live until they are 15 or 16 years old. During that time, they are entirely under the responsibility of the *marabout*, who teaches them religion and in return requires them to carry out certain tasks, including begging.

The Committee noted that there are three different forms of begging in Niger: *conventional begging*, *educational begging* and *begging that uses children for purely economic ends*. *Conventional begging* is the form practised by indigent people. *Educational begging* is the form practised in Niger in accordance with the Muslim religion as a means of learning humility, for the person practising it, and compassion, for the alms-giver. Lastly, *begging that uses children for purely economic ends* uses children as a source of labour. The Committee noted that the existence of this third form of begging was acknowledged by those interviewed, including the Government, and that, because this form of begging has its roots in cultural and religious practice, few are shocked to see children exploited in this way. However, in this form of begging children are especially vulnerable since their parents, although concerned for the children's religious education, are unable to provide for their subsistence. The children are therefore left entirely dependent on the *marabouts*. The Committee expressed serious concern at the use of children for purely economic ends by certain *marabouts*, particularly since, as it would appear from the information gathered by the mission, this form of begging is very much on the increase.

The Committee notes the Government's information to the effect that a National Monitoring Unit to combat begging has been set up. It also notes with interest that Circular No. 006/MJ/DAJ/S/AJS of 27 March 2006 of the Ministry of Justice of Niger, addressed to the various judicial authorities, requests that sections 179, 181 and 182 of the Penal Code, which punish begging and any person, including the parents of minors under 18 years of age, who engage habitually in begging, who make others beg or who knowingly benefit from begging, be strictly applied by prosecuting without leniency anyone who *uses children for begging for purely economic ends*. ***The Committee requests the Government to supply information on the practical application of the national legislation on begging, further to Circular No. 006/MJ/DAJ/S/AJS of 27 March 2006 of the Ministry of Justice, particularly by indicating whether marabouts who use children for purely economic ends have been convicted, and by providing statistics on the number and nature of contraventions reported, investigations, prosecutions, convictions and penalties imposed. It also requests the Government to indicate effective and time-bound measures taken to protect children against forced labour and to ensure their rehabilitation and social integration.***

*Clause (d). Hazardous work. Children working in mines and quarries.* In its previous comments, the Committee took note of information from the ITUC to the effect that child labour in small-scale mining (trona mining in the Boboye region, salt in Tounouga, gypsum in Madaoua and gold in Liptako-Gourma) is widespread, principally in the informal economy where the work is the most hazardous. The Committee noted that section 152 of Decree No. 67-126/MFP/T of 7 September 1967 prohibited the employment of children in underground work in mines.

The Committee noted, from the information gathered by the High-level Mission that hazardous work by children, particularly in mines and quarries, existed in informal locations. The Committee noted the Government's statement that, when parents work at informal sites, they are often accompanied by children who are too young to stay at home alone and that, in some cases, the children carry out small tasks for their parents. The Committee noted, however, that according to various interviews carried out during the mission, the children do more than simply accompany their parents, becoming involved in the chain of production, whether in gypsum mines or salt quarries, sometimes performing small tasks to facilitate their parents' work or, in some cases, tasks that are physically hazardous for more than eight hours a day, every day of the week, running the risk of accident or disease. The Committee pointed out in this connection that there is a difference between the child labour prohibited by ILO Conventions and the small tasks that children may carry out in the family environment which may be regarded as playing a major role in the child's socialization. The Committee expressed concern at the use of child labour in hazardous work, particularly in mines and quarries, in the informal sector. It observed that Niger, like many other developing countries, is affected by child labour because of the poverty of the population and the expansion of the informal economy to the detriment of the formal sector.

The Committee notes with interest the Government's statement that the Minister of the Interior, acting on the instructions of the Prime Minister, has issued a circular letter strictly prohibiting the employment of children in the mines and quarries of the areas concerned, namely Tillabéri, Tahoua and Agadez. The Minister for Mining has received directives for taking account of this ban in the drawing up of mining agreements. ***The Committee requests the Government to provide information on the implementation of the circular letter from the Minister of the Interior, particularly by indicating whether steps have been taken to ensure that the national legislation to protect children against underground work in mines is also applied to informal mining and quarrying, and by providing statistics on the number and nature of violations reported, investigations, prosecutions, convictions and penalties imposed.***

*Article 5. Monitoring mechanisms. 1. Labour inspection.* In its previous comments, the Committee noted the information in the mission report that site visits revealed that the labour inspectorate, which plays a key role in combating child labour and forced labour, is severely lacking in both the human and material resources needed to perform its duties. The mission recommended a labour inspection audit to ascertain the exact nature and extent of the inspectorate's needs in Niger. While noting that action has been taken to boost labour inspection resources for combating child labour, the Committee notes that the Government does not provide any information on this subject in its report. ***With reference to its observation under the Labour Inspection Convention, 1947 (No. 81), the Committee hopes that the Government will take the necessary steps to implement the mission's recommendation. It requests the Government to send information on this matter.***

*2. Youth Protection Unit.* The Committee notes the Government's information that a Youth Protection Unit has been set up within the national police force. ***It requests the Government to supply information on the activities of this unit, especially with regard to the protection of children under 18 years of age against trafficking and forced begging.***

*Article 6. Programme of action.* The Committee notes the Government's information to the effect that a National Plan of Action against the trafficking of children has been drawn up. ***It requests the Government to send a copy of this plan of action and provide information on the implementation thereof, especially the results achieved in terms of the elimination of trafficking of children in the country.***

*Article 7, paragraph 1. Penalties.* In its previous comments, the Committee noted that, in June 2005, the Government representative informed the Conference Committee that, notwithstanding government efforts in the legal sphere, the economic situation did not always allow standards to be applied effectively. The Committee observed that the mission report revealed that it is difficult to apply the law on forced labour and the exploitation of children for economic and sexual purposes. Noting the lack of information in the Government's report, it reminds the Government that, according to *Article 7, paragraph 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. ***The Committee urges the Government to take the necessary steps to ensure that persons who engage in the sale and trafficking of persons, forced begging by children and the use of children in hazardous work, particularly in mines and quarries, are prosecuted and incur penalties that are sufficiently effective and dissuasive.***

*Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. 1. Improving the working of the education system.* In its previous comments, the Committee noted that the mission report showed that underlying the problem of child labour is the problem of children's access to education and training that meets the needs of the labour market. Moreover, despite the Government's endeavours in the area of education and its attempts to attain the objective of providing all children, boys and girls, with the means to complete a full primary education cycle by 2015, the situation is still unsatisfactory. The Mission also indicated that parents hesitate to send their children to school when they see that such education affords no guarantee of a job, whereas the Muslim religious schools train children to be good Muslims or even teachers of the Koran, which explains why such schools are on the increase in Niger. The Committee noted in this respect that the education dispensed by Muslim religious teachers leads to no diploma, which limits the children's potential for entering the labour market in the future. The Committee expressed deep concern at the low school enrolment rate and the extent of illiteracy. It noted the Mission's recommendation to the effect that the working of the education system needs to be improved to ensure access for all to high-standard education. The Committee also noted that the Government was considering the possibility of integrating the Muslim religious schools into the national education system, which would make for better supervision both of the teachers and of the education provided.

The Committee notes the information in the Government's report concerning the increase in primary school enrolments, especially among girls. It also notes that the number of classrooms in rural areas has increased. Moreover, the Committee notes that, according to the Government's report on statistics for basic education for 2005–06, the net school attendance rates for children between 7 and 12 years of age is 54.1 per cent for boys and 37.8 per cent for girls, with an average figure of 45.8 per cent. It observes that, according to UNESCO information for 2005, the school attendance rate at primary level is 46 per cent for boys and 33 per cent for girls, and 9 per cent for boys and 6 per cent for girls at secondary level. With regard to the Muslim religious schools, the Committee duly notes the Government's information that, in the context of the Franco–Arab education support project, measures for restructuring the schools have been taken, including taking a census of the schools (of which there were 50,000 in 2000); training the Muslim religious teachers in teacher–pupil relations; and revising the teaching programme by introducing new subjects such as grammar, language, and vocational training activities (sewing, dyeing and woodworking). ***In view of the fact that education helps to prevent the engagement of children in the worst forms of child labour, the Committee strongly encourages the Government to renew its efforts to improve the working of the education system, especially by increasing the school attendance rate and reducing the school drop-out rate, and also by taking steps to integrate the Muslim religious schools into the national education system. It requests the Government to provide information on the results achieved.***

*2. Informing and educating the public about the problems of child labour and forced labour.* The Committee noted that, in its report, the Mission recommended measures to raise awareness and educate the public about the problems of child labour and forced labour, taking account of the gender dimension, because they affect the two sexes differently and because experience has shown that if women (mothers) are made aware, the impact on development is greater. It also noted the Mission's suggestion that specific measures to raise awareness among teachers of the Koran and parents should be undertaken to prevent the use of begging by certain *marabouts*. The Committee notes the Government's statement that it has conducted information and training campaigns among those involved in fighting the problem of child labour and its worst forms, including political decision-makers, employers, community leaders and traditional chiefs, police officers, magistrates, current or potential child workers and their parents, teachers, students and the general public. ***The Committee encourages the Government to pursue its efforts of sensitization to inform people of the dangers of child labour and its worst forms, by cooperating with the various government agencies, civil society in general and traditional chiefs.***

*3. Project in small-scale gold mines in West Africa.* In its previous comments, the Committee noted that Niger is taking part in the ILO/IPEC project to “Prevent and eliminate child labour in small-scale gold mines in West Africa”, in which the other participants are Burkina Faso and Mali, for three years from 2006. It asked the Government to provide information on the results achieved following the implementation of the project. The Committee notes that, according to the information in the ILO/IPEC activity reports for 2007, approximately 280 children (165 boys and 115 girls) have actually been prevented from being engaged in hazardous work in small-scale gold mines. ***The Committee requests the Government to supply information on the implementation of the project and also on the results achieved at the end of the project in terms of the actual numbers of children prevented from being engaged in this worst form of child labour.***

*Clause (b). Necessary direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.* With reference to its previous comments on the ILO/IPEC project to “Prevent and eliminate child labour in small-scale gold mines in West Africa”, the Committee notes that, according to the information in the ILO/IPEC activity reports on the project for 2007, more than 400 children, 45 per cent of whom are girls, have benefited directly from the activities of the project. It also notes that several action programmes on education and vocational training, with a view to removing children involved in gold-washing from small-scale mines, have been

implemented. *The Committee requests the Government to provide information on the number of children who will actually be removed from small-scale gold mines further to the implementation of the ILO/IPEC project and the action programmes on education and vocational training. It also requests the Government to supply information on the results achieved through the implementation of these programmes to ensure the rehabilitation and social integration of these children.*

*Article 8. Cooperation. 1. Regional and international cooperation.* With reference to its previous comments, the Committee notes that, apart from signing the Multilateral Cooperation Agreement to combat child trafficking in West Africa in July 2005, Niger also signed the Abuja Multilateral Cooperation Agreement in 2006. It also duly notes the Government's indication that it signed a bilateral agreement with Nigeria for the setting up of a joint border surveillance unit. *The Committee requests the Government to indicate whether, in the context of the implementation of these agreements with the other signatory countries, child victims of trafficking have been detected and intercepted in the border areas, and whether any persons involved in child trafficking networks have been apprehended and arrested.*

*2. Poverty reduction.* With reference to its previous comments, in which it noted the statement that the High-level Mission recommended that, in order to combat poverty, the creation of decent and productive jobs must be at the core of any poverty reduction policy, the Committee duly notes that the Government has drawn up a new economic, financial and social policy framework entitled "Fast-track development and poverty reduction strategy (2008–12)" (SDARP). *The Committee requests the Government to provide information on the SDARP, particularly as regards the effective reduction of poverty among children engaged in the worst forms of child labour.*

*Parts IV and V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted that, in its report, the High-level Mission referred to a lack of reliable data for quantifying accurately the extent and characteristics of the problem of child labour. It noted that studies were under way and asked the Government to provide information on their results. The Committee notes the Government's statement that the following studies are being conducted in the country: study on the state of children's education for the 6–18 age group conducted by a consortium of NGOs; study on child labour in gold washing in Niger conducted by the National Institute of Statistics (INS) in collaboration with the ILO/IPEC project on mining in West Africa; basic study on forced labour and child labour in Niger conducted by the National Committee on Human Rights and Fundamental Freedoms; and the national study on child labour in Niger conducted by the INS in collaboration with ILO/IPEC and in partnership with a consortium of NGOs. *The Committee requests the Government, once the studies are completed, to supply statistical data and information on the nature, extent and trends of the worst forms of child labour and on the number of children protected by the measures giving effect to the Convention. The information supplied should, as far as possible, be disaggregated by sex.*

The Committee is also raising a number of other points in a direct request to the Government.

## Nigeria

### **Minimum Age (Underground Work) Convention, 1965 (No. 123) (ratification: 1974)**

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

The Committee recalls that for a number of years, it has been requesting the Government to indicate measures taken to give effect to the Convention (*Article 4, paragraph 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 asks the Government to inform it of 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)**

The Committee notes the Government's report. *It requests the Government to supply further information on the following points.*

*Article 3 of the Convention. Worst forms of child labour. Clause (d). Hazardous work.* In its previous comments, the Committee had expressed concern for the health and safety of children under 18 years of age involved in camel racing and subject to exploitation. It had noted the Government's statement that the Omani Labour Code does not allow for the employment of children under 18 years of age in hazardous work. According to the Government, camel races are a traditional and popular national sport from ancient times practised by adults and children and only Omani children ride as camel jockeys. The latter are not hired workers riding camels in return for a wage and, accordingly, the jockeys are not child labourers. The Committee had further noted that the Regulations on holding and organizing camel races in the Sultanate of Oman, issued by the Oman Equestrian and Camel Federation on 7 August 2005, state that no jockey under 18 years of age will be allowed to take part in camel races in the Sultanate of Oman. It had observed, however, that section 2 of these regulations states that the minimum age of 18 years for taking part in camel races would be reached progressively starting from a minimum age of 14 years, over four years starting from the 2005–06 season. The Committee had noted that the Government adopted a number of wide-ranging measures aimed at protecting the health and safety of camel jockeys under 18 years and providing them with training. While welcoming the measures aimed at protecting the health and safety of camel jockeys, it had considered that camel racing was inherently dangerous to the health and safety of children. It requested the Government to ensure that the measures to protect the health and safety of camel jockeys under 18 years of age were strictly enforced, pending the progressive increase in the minimum age to 18 for camel racing.

The Committee notes the Government's information that the Omani Federation of Camel Racing fully observes the measures set down to protect the health and safety of camel jockeys under 18 years of age. In particular, it undertakes preventive measures to ensure the safety and security of camel jockeys in camel races, by obliging them to wear protective headgear and suitable clothing. It also notes the Government's information that races only occur in Oman when the Omani Federation of Camel Racing – working under direct supervision of the Ministry of Sport Activities – agrees that all conditions are respected: camel jockeys are not young, they enjoy good health and conditions regarding the safety measures are fulfilled. According to the Government, the Omani Federation of Camel Racing continues to undertake unannounced inspection visits to verify that the age of camel jockeys is not less than 15 years. Since the Council of Ministers has approved the decision to increase the age of camel jockeys to 18 years, the Omani Federation of Camel Racing has 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. Meanwhile, in 2007, all camel jockeys participating in camel races are required to register their names with the Omani Federation of Camel Racing and hand over their passports, personal photographs and birth certificates to the Federation.

The Committee observes that, according to the Government's information, the minimum age for taking part in camel races has been progressively raised from 14 to 15 years, in accordance with the Regulations on holding and organizing camel races in the Sultanate of Oman of 7 August 2005. It welcomes the measures taken by the Omani Federation of Camel Racing to increase supervision on the legal requirements that camel jockeys must fulfil to participate in camel races, especially on the legal age to participate in these races. ***The Committee requests 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. In this regard, it urges the Government to ensure that unannounced inspections are carried out by the labour inspectorate to ensure that children between 15 and 18 years of age do not perform their work under circumstances that are detrimental to their health and safety. It also requests the Government to continue providing information on the progress in raising the minimum age for taking part in camel races to 18 years.***

*Article 7, paragraph 1. Penalties.* The Committee had previously noted that Decision No. 30-2002 of 8 August 2005 of the Omani Federation of Camel Racing states that any person who violates the Regulations on holding and organizing camel races in the Sultanate of Oman of 2005 shall be convicted by the court. It had requested the Government to indicate the applicable penalties under Decision No. 30-2002 of 8 August 2005. The Committee notes that the Government provides a document showing the list of names of camel jockeys prohibited from participating in camel races by the Omani Federation of Camel Racing due to violations of the regulations on racing. Two of these cases regard violations of the rules on the legal age to participate in camel races. The Committee observes that the Government's report contains 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. ***It once again requests the Government to provide information on the penalties imposed on any person who employs a child as a camel jockey in violation of Decision No. 30-2002 of 8 August 2005.***

The Committee is also addressing a direct request to the Government concerning other points.

## Pakistan

### **Minimum Age (Industry) Convention (Revised), 1937 (No. 59) (ratification: 1955)**

The Committee notes the Government's report. ***It requests the Government to provide information on the following points.***

*Article 7, paragraph 4(a) and (b), of the Convention. Minimum age for admission to employment in mines and quarries and in dangerous and unhealthy occupations.* The Committee had noted, since 1992, that the Mines Act of 1923 and the Factories Act of 1934 established the minimum age of 15 years for access to employment in mines and for dangerous or unhealthy occupations, respectively, in accordance with *Article 7, paragraph 4(a) and (b)*, of the Convention. It had noted that the Employment of Children Act, 1991, in section 2(iii), defined “child” as a person who has not completed his/her 14th year of age, and prohibits the employment or work in the prescribed occupations or processes for children (i.e. under the age of 14 years). It had further noted that section 19 of the Act of 1991 stipulates that the definition of “child” contained in the Factories Act of 1934 and in the Mines Act of 1923, should be deemed to be amended in accordance with the definition in section 2 of the Act of 1991. The Committee had therefore observed that the Employment of Children Act of 1991 did not meet the requirements under *Article 7, paragraph 4*, of the Convention and the change of the definition of “child” from under 15 years to under 14 years signified a retrogression from the minimum age earlier prescribed under the Factories Act, 1934, and the Mines Act, 1923.

The Committee notes the Government’s information that, under the existing labour laws (Mines Act of 1923, Factories Act of 1934, the Road and Transport Ordinance of 1975) and the Constitution, children under 14 years cannot be employed or work in any public or private industrial undertaking containing processes dangerous to the life, health and morals of children. In particular, according to the Employment of Children Act of 1991, children under 14 years of age cannot be employed in occupations dangerous to their life, health and morals listed in the same Act. The Committee also notes that, according to the information provided by the Government under Convention No. 182, the Employment of Children Act, as amended by Act No. 1280(I) 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 observes that employment or work in mines, quarries, and other works for the extraction of minerals from the earth or in occupations which are scheduled as dangerous or unhealthy by the competent authority is covered by Article 3(d) of Convention No. 182 which was ratified by the Government in 2001. ***The Committee urges the Government to amend its legislation and in this regard requests the Government to refer to its comments made under Article 3(d) of Convention No. 182.***

*Part V of the report form. Application of the Convention in practice.* The Committee had previously noted that the action programmes launched under the International Programme on the Elimination of Child Labour (ILO/IPEC) were contributing towards informal education and simultaneously combating child labour. The Committee notes with interest that, according to the information provided by the Government under Convention No. 182, in the period 2004–07, under the ***Time-bound Programme (TBP)*** for the elimination of the worst forms of child labour, various projects have been launched to eliminate child labour in the following industries: tanneries, surgical instruments manufacturing industries, glass bangle industry, deep-sea fishing industry, coal mining industries, rag-picking. Under these projects, in total, 11,800 children were removed from child labour in the abovementioned sectors and rehabilitated through vocational training and health-care services. In particular, 4,750 children who were withdrawn from the glass bangle industry received health-care services and 300 children benefited from vocational training programmes. Moreover, 2,550 children who were removed from the surgical industry received healthcare services and 160 benefited from vocational training programmes. According to the Government, the “National project on the rehabilitation of child labour” has been expanded. The number of national centres for the rehabilitation of child labourers has been increased from 83 in 2004 to 151 in 2007. In these centres, former child workers between 5 and 14 years of age, removed from hazardous work, are provided with free education, vocational training, clothing, footwear and a stipend. At present, 15,045 students are benefiting from primary education in these centres, and 4,497 have been admitted in governmental schools for further education. Moreover, the Child Care Foundation (CCF), an NGO, worked in the provinces of Punjab and Sindh to rehabilitate children working in the carpet industry. As a main result of the activities of the CCF, over 7,000 working children received free education and vocational training. Moreover, 525 children completed primary education and 976 children were mainstreamed into governmental schools. The Committee finally notes the statistical information provided by the Government on the inspections carried out in the period 2005–07 regarding compliance with the Employment of Children Act of 1991. In particular, in 2006, 9,286 inspections were carried out which resulted in 6,300 penalties and 81 convictions. In 2007, 322 inspections were carried out, which resulted in 1,637 cases still pending before courts. ***The Committee proposes to continue to examine more specifically the application of this Convention in practice under Convention No. 182.***

## Paraguay

### ***Minimum Age (Industry) Convention (Revised), 1937 (No. 59)*** ***(ratification: 1966)***

The Committee notes the Government’s report.

*Article 2, paragraph 2, of the Convention. Minimum age of employment in industrial undertakings.* In its previous comments, the Committee noted that section 120 of the Labour Code allows persons aged between 12 and 15 to work in undertakings in which those employed are “preferably” members of the employer’s family. Recalling that under this provision of the Convention, national legislation may permit the employment of children under 15 in undertakings in which “only” members of the employer’s family are employed, the Committee asked the Government to provide

information on the measures adopted or envisaged to bring national legislation into conformity with the Convention in this respect.

In its report, the Government states that section 29 of the Labour Code provides that work of a family nature for which “only” members of the family or persons accepted by that family, under the protection of one of its members, are employed is excluded from the application of the Code, provided that the workers are not salaried employees. The Committee notes that, under this provision, the scope of Labour Code does not exclude *salaried* persons under 15 years who work in the same undertaking as members of their family. Thus, section 120 of the Labour Code, which allows minors over the age of 12 but under the age of 15 to work in undertakings in which those employed are “preferably” members of the employers’ family, is applicable to them. ***Under these circumstances, the Committee asks the Government to indicate the scope of the term “preferably”, found in section 120 of the Labour Code. In this regard, the Committee reminds the Government that the possibility offered by Article 2, paragraph 2, of the Convention to permit the employment of children under the age of 15 years in undertakings in which “only” members of the employer’s family are employed, applies to both salaried and non-salaried persons.***

*Article 5. Dangerous work.* Further to its previous comments, the Committee notes with satisfaction the adoption of Decree No. 4951/05 which regulates Act No. 1657/01 and approves the list of dangerous types of child labour.

### **Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1966)**

The Committee notes the Government’s report.

*Article 4, paragraphs 1 and 2, of the Convention. Medical re-examination of fitness for employment until the age of 21 years.* In its previous comments, the Committee reminded the Government that, apart from the general examination provided for by *Articles 2 and 3* of the Convention, provision has to be made under *Article 4* of the Convention, in respect of occupations which involve high health risks, for a medical examination of fitness for employment and for re-examination until at least the age of 21 years. It also reminded the Government that the national legislation must define the jobs or categories of jobs for which this examination of fitness is required. The Committee requested the Government to adopt the necessary measures to bring its national legislation into conformity with the Convention on this point.

While taking due note of the information supplied by the Government concerning the specific register of workers under the age of majority established by resolution No. 701 of 3 October 2006, the Committee observes that although this is a protective measure, it concerns only young persons between 14 and 18 years of age and does not meet the requirements of *Article 4* of the Convention. ***The Committee therefore once again requests the Government to take the necessary measures to provide, in respect of occupations involving high health risks, for an examination of fitness for employment and for re-examination until at least the age of 21 years. It also requests the Government to define the occupations or categories of occupations in respect of which such an examination is required.***

*Article 6, paragraph 1. Measures for vocational guidance and physical and vocational rehabilitation of children and young persons declared unable to work. Noting the absence of information in the Government’s report, the Committee again requests it to take the necessary measures to provide for the physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations. It asks the Government to supply information in this regard.*

*Part V of the report form. Application of the Convention in practice.* Referring to its previous comments, the Committee notes the Government’s information that no figures are available. ***The Committee hopes that, in view of the establishment of the specific register of young workers, the Government will be in a position to supply in its next report statistical data on the number of children and young persons who are working and who have undergone the medical examinations provided for by the Convention, extracts of inspection reports relating to infringements reported and penalties imposed, and also any other information concerning the application of the Convention in practice.***

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1966)**

The Committee notes the information contained in the Government’s report. ***The Committee requests the Government to refer to its comments under Convention No. 77.***

### **Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79) (ratification: 1966)**

The Committee takes note of the Government’s report.

*Article 3 of the Convention. Period during which it is forbidden to work at night.* In its previous comments, the Committee noted with satisfaction that under section 2 of Decree No. 4951 of 22 March 2005, night work between 7 p.m. and 7 a.m., i.e. a period of *12 hours*, is classified as dangerous and that, pursuant to section 3 of the Decree, it is prohibited for children under 18 years of age. It nonetheless noted that section 58 of the Children’s and Young Persons’ Code prohibits night work for children aged 14 to 18 years for a period of *ten hours* including the interval between 8 p.m. and 6 a.m. In order to avoid any ambiguity in the law, the Committee deemed it advisable to align section 58 with the Children’s

and Young Persons' Code with Decree No. 4951 of 22 March 2005 and the Convention, by introducing an amendment to increase to 12 hours the period during which young persons must not work at night.

While noting the information from the Government that the exceptions allowed by this provision of the Convention have not been used, the Committee again expresses the view that it would be advisable to align section 58 of the Children's and Young Persons' Code with Decree No. 4951 of 22 March 2005, the Convention and practice. *It requests the Government to take the necessary steps to amend section 58 of the Children's and Young Persons Code and to establish that the period during which children may not work at night must be 12 hours.*

### **Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1966)**

The Committee notes the Government's report. *It requests the Government to refer to the comments made under Convention No. 79.*

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's first and second reports and the attached documentation. It also notes the observations made by the International Trade Union Confederation (ITUC) dated 30 August 2006.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* The Committee notes that, in his report of 9 December 2004 (E/CN.4/2005/78/Add.1), the Special Rapporteur on the Sale of children, child prostitution and child pornography indicates that, according to evidence gathered in the various cities during his visit to Paraguay, the trafficking of children is a widespread problem in the country. One of the reasons for this phenomenon is that the country's borders are permeable and checks by immigration officials are rare.

The Committee notes that, in its comments, the ITUC refers to a 2005 study on the trafficking of persons in Paraguay undertaken by the NGO *Grupo Luna Nueva* on behalf of the International Organization for Migration (IOM). According to this study, trafficking of persons, including boys and girls, at both the international and domestic levels, is on the increase in the country. The number of cases of trafficking reported increased from eight in 2002, involving 42 women, of whom 12 were minors, to 118 in 2005, involving 495 women, of whom 145 were under 18 years of age. Furthermore, according to the same study, Paraguay is a *country of origin and of destination*. Of the 145 girls involved in the cases of trafficking of persons reported in 2005, around 62 per cent were taken to Argentina, approximately 28 per cent were displaced within the country and 10 per cent were removed to other countries, including Brazil. Furthermore, even though in order to leave the country children under 18 years of age require parental authorization, signed by the judicial authority, and their identity documents, this requirement is not applied in practice. The ITUC also emphasizes that the penal legislation does not prohibit the international trafficking of persons for economic exploitation or internal trafficking, and does not penalize accomplices involved in the process of trafficking. In the view of the ITUC, the reasons for which few cases of the trafficking of persons are reported and that there are few prosecutions are the absence of adequate legislation and the lack of awareness of the phenomenon in society, and particularly among the police. By way of illustration, the ITUC indicates that between 2002 and 2004, penal sanctions were only imposed in 21 cases of trafficking.

The Committee notes that section 129 of the Penal Code prohibits the use of force or threats with a view to causing a person to leave or to enter the national territory for the purposes of prostitution. It also notes that section 2(15) of Decree No. 4951 of 22 March 2005, issued under Act No. 1657/2001 approving the list of hazardous types of work, provides that activities involving the displacement of a child to other countries and the periodic movement of a child within national frontiers, are considered to be hazardous types of work. The Committee observes that, although section 129 of the Penal Code prohibits the international trafficking of persons for prostitution, it does not prohibit the international trafficking of persons for economic exploitation or domestic trafficking.

The Committee notes that convergent information demonstrates the existence of the international and domestic trafficking of young persons under 18 years of age for both economic and sexual exploitation. In this respect, it reminds the Government that *Article 3(a)* of the Convention requires the Government to prohibit the international and domestic sale and trafficking of young persons under 18 years for economic and sexual exploitation. The Committee observes that the national legislation applicable to this worst form of child labour displays shortcomings, which may give rise to problems in its implementation, particularly with regard to the manner in which these offences are addressed. The Committee notes that bills on tourism and sexual exploitation, including the trafficking of persons, has been prepared and is under discussion in the various government bodies. *The Committee hopes that in the bills the Government will take into consideration the Committee's comments and will prohibit the sale and trafficking of young persons under 18 years for economic and sexual exploitation. Furthermore, it also encourages the Government to redouble its efforts to ensure in practice the protection of young persons under 18 years against sale and trafficking for both economic and sexual exploitation and requests it to provide information on the application of sanctions in practice and, among other information, to provide reports on the number of convictions.*

*Clause (b). Use, procuring or offering of children for prostitution.* The Committee notes that, in his report of 9 December 2004 (E/CN.4/2005/78/Add.1), the Special Rapporteur on the Sale of children, child prostitution and child pornography indicates that two out of three sex workers are minors. Most of the young persons who are victims of sexual

exploitation are aged between 16 and 18 years and began working in the sex trade between the ages of 12 and 13. Children as young as 8 years of age are also involved.

The Committee notes the ITUC'S indication in its communication that, although the number of children engaged in prostitution varies, around half of those engaged in prostitution in Paraguay are minors. According to a study carried out by ILO/IPEC in June 2002 on the commercial sexual exploitation of girls and boys, out of every three persons who work in the sex industry, two are minors. Since 2004, as a result of the awareness-raising campaigns undertaken in the various cities of the country on this subject and the adoption of regulations on the closure of bars and brothels, the problem has become more clandestine. Children engaged in prostitution are now more likely to be found in flats and on the outskirts of towns. According to the ITUC, the majority of children who are victims of prostitution are girls, but the available information indicates that transsexual boys begin to work in prostitution from the age of 13 years and are often the victims of trafficking to Italy. The ITUC adds that the consequences of the sexual exploitation of children are very clear. In addition to physical and psychological ill-treatment, the majority of those engaged in this worst form of child labour drink, smoke and take drugs. Moreover, the ITUC indicates that the police do not have personnel specialized in investigations into the commercial sexual exploitation of children and the law enforcement agencies do not clearly understand that children engaged in prostitution may be victims of crime and that, in practice, they are often treated as prostitutes and criminals.

The Committee notes that sections 139 and 140 of the Penal Code prohibit the procuring and exploitation of persons engaged in prostitution. It notes that, although the national legislation is in conformity with the Convention, the use, procuring or offering of children under 18 years of age for prostitution still occurs in practice. The Committee expresses serious concern at the situation of children who are the victims of sexual exploitation in Paraguay, particularly for commercial purposes. ***It requests the Government to redouble its efforts to improve the situation and to take the necessary measures to ensure that effect is given to the legislation in practice and to protect children under 18 years of age from being used, procured or offered for prostitution. The Committee also requests the Government to provide information on the application of sanctions in practice including, for instance, reports on the number of convictions. Furthermore, it requests the Government to indicate whether the national legislation contains provisions criminalizing the client in the event of prostitution.***

***Article 5. Monitoring mechanisms. Commercial sexual exploitation.*** In its comments, the ITUC indicates that very few controls are carried out at borders. It is therefore very easy to transport children from *Ciudad del Este* or from *Pedro Juan Caballero* to *Foz de Iguazú* in Brazil, and from *Encarnación* and *Puerto Falcón* to *Posadas* and *Clorinda* in Argentina. Moreover, the Argentinian customs officers regularly apprehend minors who have crossed the Paraguayan border without being intercepted and either do not have identity documents or have documents belonging to other persons. By way of example, the ITUC indicates that, according to the IOM study, up to November 2004, Argentinian customs officers on the borders of *Puerto* and *Falcón-Clorinda* refused entry to around 9,000 persons, of whom 40 per cent were minors without proper documentation. The ITUC adds that several Paraguayan officials in the Department of Migration and Identification and the Department of Immigration believe that they do not have the authority to intervene in cases of trafficking and suppose that the offence of the trafficking of persons can only be committed in the country of destination of the victims. Accordingly, victims of trafficking are unlikely to lodge complaints as they lack confidence in the judicial system and fear reprisals from the traffickers. ***The Committee expresses concern at the weakness of the national institutions responsible for enforcing the legislation on the commercial sexual exploitation of children. It requests the Government to take the necessary measures to reinforce these institutions, and particularly the police, the judiciary and customs officers, and to provide information on this subject.***

***Article 6. Programmes of action. National Plan for the Prevention and Elimination of the Sexual Exploitation of Girls, Boys and Young Persons.*** The Committee takes due note of the National Plan for the Prevention and Elimination of the Sexual Exploitation of Girls, Boys and Young Persons, and the information provided on the progress achieved as a result of its implementation. ***It requests the Government to continue providing information on the National Plan, on programmes of action for the elimination of the commercial sexual exploitation of children undertaken in the context of the National Plan and on the results achieved.***

***Article 7, paragraph 2. Effective and time-bound measures.*** The Committee notes that Paraguay participated in the ILO/IPEC project on the Prevention and elimination of the commercial sexual exploitation of children on the borders between Argentina, Brazil and Paraguay. It takes due note of the fact that this project contributed to the removal of several children from this worst form of child labour on the borders between these countries and to the provision of psychological assistance to the beneficiaries of the programme.

***Clauses (a) and (b). Preventing children from becoming engaged in the worst forms of child labour, removing them from these worst forms of child labour and ensuring their rehabilitation and social integration.*** 1. ***Commercial sexual exploitation.*** The Committee notes that one of the objectives of the ILO/IPEC project on the Prevention and elimination of domestic work by children and the commercial sexual exploitation of children is to prevent the engagement of children in commercial sexual exploitation and to remove children who are already engaged in this activity. The Committee notes that, during the course of 2006, around 150 children were removed from this worst form of child labour and received assistance, particularly psychological help and assistance in their schooling. At the beginning of 2007, around 50 children were detected in situations of commercial sexual exploitation. The Committee also notes that shelters for child victims of

commercial sexual exploitation have been established. However, it observes that little information is available on this subject. **The Committee requests the Government to continue providing information on the results achieved in the context of the implementation of this project in terms of: (a) preventing children from becoming victims of commercial sexual exploitation; and (b) providing the necessary and appropriate direct assistance for the removal of children from this worst form of child labour and for their rehabilitation and social integration. It also requests the Government to provide information on the shelters for child victims of commercial sexual exploitation, with an indication, for instance, of the number of children admitted to the shelters whether specific medical and social follow-up programmes have been prepared and implemented for these children and whether the latter receive basic education or have access to vocational training.**

2. *Tourism.* **As the country benefits from a certain level of tourism, the Committee requests the Government to indicate whether measures have been taken to raise the awareness of the actors directly related to the tourist industry, such as associations of hotel owners, tourist operators, associations of taxi drivers, as well as owners of bars and restaurants and their employees, on the subject of sexual exploitation.**

3. *Teaching materials, training and awareness raising.* The Committee duly notes the many preventive measures adopted with a view to preventing children from becoming victims of commercial sexual exploitation. In particular, it notes the following measures: (i) the formulation and publication of educational materials on the sexual exploitation of children; (ii) training activities on the commercial sexual exploitation of children organized for police officers in certain departments of the country and for the national police; and (iii) awareness-raising campaigns for the population. **The Committee requests the Government to intensify its training and awareness-raising activities for the population and civil society.**

*Clause (d). Children at special risk. Children working in domestic service – the “criadazgo” system.* The Committee notes the ITUC’s indication in its communication that, according to a study carried out between 2000 and 2001, over 38,000 children between the ages of 5 and 17 years worked in domestic service in the houses of others. Moreover, another group of children who are very vulnerable to exploitation, namely those engaged under the “criadazgo” system, live and work in the houses of others in exchange for accommodation, food and basic education. The numbers involved are not known since, as these children are normally considered not to be working, they are not taken into account in statistics. However, the ITUC indicates that a study undertaken in 2002 by the Documentation and Studies Centre shows that nearly 60 per cent of children working in domestic service and those engaged under the “criadazgo” system are aged 13 years and under. According to the ITUC, in so far as these children do not control their conditions of employment, a majority of them work under conditions of forced labour. The Committee notes that section 2(22) of Decree No. 4951 of 22 March 2005, issued under Act No. 1657/2001 and approving the list of hazardous types of work, provides that domestic work by children and work under the “criadazgo” system are considered to be hazardous types of work. The Committee also notes that, according to ILO/IPEC information relating to the implementation of the project on the prevention and elimination of domestic work by children and the commercial sexual exploitation of children, a system for the school enrolment of children has been developed and approved by the National Commission on the Elimination of Child Labour and the Ministry of Labour. Under this system, children at risk of being engaged in domestic service and children who worked as domestics have been enrolled in school.

The Committee takes due note of the measures adopted by the Government to protect children working as domestics against the worst forms of child labour. **However, observing that children engaged in domestic work are often the victims of exploitation, which takes on widely varying forms, it requests the Government to redouble its efforts to protect these children from the worst forms of child labour. The Committee also requests the Government to provide information on the measures adopted in the context of the implementation of the project on the prevention and elimination of domestic work by children and the commercial sexual exploitation of children with a view to: (a) preventing children from being engaged as domestics; and (b) providing the necessary and appropriate direct assistance to remove child domestic workers who are victims of the worst forms of child labour and to ensure their rehabilitation and social integration.**

*Clause (e). Special situation of girls.* The Committee notes that, according to the ITUC’s comments, activities relating to commercial sexual exploitation are linked to international trafficking networks and particularly affect girls. **It requests the Government to provide information on the manner in which it intends to pay particular attention to such girls and thereby prevent them from being engaged in commercial sexual exploitation and remove them from this worst form of child labour.**

*Article 8. Enhanced international cooperation.* The Committee notes that Paraguay is a member of Interpol, an organization which contributes to the cooperation between countries of different regions, particularly to combat the trafficking of children. The Committee is of the view that international cooperation between law enforcement agencies, particularly the judicial authorities and the agencies responsible for the implementation of the law, is indispensable to prevent and combat commercial sexual exploitation, including the sale and trafficking of children for that purpose, through the collection and exchange of information, and through assistance to detect and prosecute the individuals involved and to repatriate victims. **The Committee therefore hopes that the Government will take the necessary measures to cooperate with countries sharing borders with Paraguay, thereby reinforcing security measures with a**

*view to bringing an end to this worst form of child labour. It requests the Government to provide information on this subject.*

*Parts IV and V of the report form. Application of the Convention in practice.* The Committee notes that, according to ILO/IPEC information relating to the project for the prevention and elimination of child domestic labour and the commercial sexual exploitation of children, studies have been carried out on the extent and characteristics of these two forms of child labour. *The Committee requests the Government to provide copies of these studies. Furthermore, it requests it to provide statistics and information on the nature, extent and trends of the worst forms of child labour, the number of children covered by the measures giving effect to the Convention, the number and nature of the infringements reported, and the penal sanctions applied. To the extent possible, all information provided should be disaggregated by sex.*

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

## Philippines

### **Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1953)**

The Committee notes the Government's report.

*Article 2 of the Convention.* In its previous comments, the Committee had noted that the regulation issued by Directive No. 23 of 30 May 1977, which prohibited night work for young persons under 16 years between 10 p.m. and 6 a.m. was not in conformity with the provisions of the Convention, under the terms of which the prohibition should cover a period of at least 12 consecutive hours, including the interval between 10 p.m. and 6 a.m. It had noted the Government's information that a comprehensive child labour bill (Senate Bill No. 1530) was in the process of being enacted providing that no child below 15 years of age shall be allowed to work between 6 p.m. and 6 a.m. the following day.

The Committee notes the Government's information that the comprehensive child labour bill was enacted into law on 19 December 2003 by Republic Act No. 9231. This Act is known as "an Act providing for the elimination of the worst forms of child labour and affording stronger protection for the working child". Subsection (3) of section 12A of Act No. 9231 prescribes that no child under 15 years of age shall be allowed to work between 8 p.m. and 6 a.m. of the following day. Moreover, no child between 15 and 18 years shall be allowed to work between 10 p.m. and 6 a.m. of the following day.

The Committee observes that subsection (3) of section 12A of Act No. 9231 is not in conformity with *Article 2* of the Convention. In this regard, the Committee reminds the Government that *Article 2* of the Convention lays down that *night* signifies a period of 12 consecutive hours (*paragraph 1*). For young persons under 16 years of age this period shall include the interval between 10 p.m. and 6 a.m. of the following day (*paragraph 2*), and for young persons between the ages of 16 and 18 years, the interval of at least seven consecutive hours falling between 10 p.m. and 7 a.m. (*paragraph 3*). *The Committee requests the Government to take the necessary measures to amend subsection (3) of section 12A of Act No. 9231 in order to ensure conformity with Article 2 of the Convention.*

### **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 30 August 2006. It finally takes note of the detailed discussion which took place at the Conference Committee on the Application of Standards of the 95th Session of the International Labour Conference in June 2006. *It requests the Government to supply further information on the following points.*

*Article 3 of the Convention. Worst forms of child labour. Clause (a). 1. 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; section 59 of the Child and Youth Welfare Act). It had noted 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 ITUC added that a large number of victims of trafficking were promised work as domestic workers only to be led into prostitution. The Committee had noted that the Visayan Forum Foundation (VFF) initiated the organization of a multi-sectoral network against trafficking in October 2003. It had also noted that the Government took some measures to prevent trafficking of children, such as the adoption of Administrative Order No. 114 aimed at screening the purpose of the travel of a child abroad and ensuring that his/her best interest is protected before the issuance of a certificate to travel.

The Committee notes the Government's information during the Conference Committee discussion that, in the framework of the ILO/IPEC *Time-bound Programme (TBP)* signed in 2002, 1,200 children were rescued from trafficking.

It also notes the ITUC's allegation that the Department of Labor and Employment (DOLE) regulations regarding recruitment and placement of domestic labourers are not yet attuned to the new trafficking law of 2003.

The Committee notes with interest that the Philippines adopted a number of measures aimed at preventing and combating the trafficking of children. Particularly, it notes the Government's information that the DOLE prepared the proposed amendments to the Rules Governing Private Recruitment and Placement Agencies to Local Employment. These amendments will introduce in the abovementioned Rules the provisions against child trafficking contained in Act No. 9231 (Act providing for the elimination of the worst forms of child labour) and in the Anti-trafficking in Persons Act of 2003. Moreover, some local government units have passed local ordinances to address the child trafficking issue in their respective communities such as Ordinance No. 52 (Paombong, Bulacan) and Ordinance No. 566 (Marilao, Bulacan), which implement and enforce the provisions of the Anti-trafficking in Persons Act of 2003. Furthermore, the Committee notes that the Government has also taken specific measures aimed at preventing and combating trafficking for the purpose of exploitation in domestic work such as Ordinance No. SP-1472, series of 2004 (Quezon City) entitled "An ordinance enjoining all *barangay* officials of Quezon City to conduct massive registration of *Kasambahay* and/or domestic workers in their respective *barangays*". In addition, according to the information available at the Office, in 2006, the Philippine Overseas Employment Agency (POEA) issued new employment requirements for overseas Filipino household workers to protect them from trafficking and widespread employer abuse. Such requirements raised the minimum age for domestic work from 18 to 23 years and provided that prospective domestic workers must obtain a certificate of competency attesting to their skills. Employers are required to submit employment contracts for verification. Moreover, in order to protect overseas Filipino domestic workers from illegal recruitment, foreign employers are required to undergo pre-qualification screening by the Philippine Overseas Labor Office and submit a written statement committing themselves to the fair and humane treatment of their domestic workers. The Committee welcomes the comprehensive measures taken by the Government to prevent and combat the trafficking of children under 18 years. ***It requests the Government to continue to provide information on the measures taken to prevent and combat the trafficking of children under 18 years, in particular for domestic work and commercial sexual exploitation, and the results achieved.***

2. *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 the Anti-trafficking in Persons Act of 2003). The Committee had nevertheless noted the ITUC's indication that numerous children under 18 continued to take part in armed conflicts. Particularly, based on a report from the DOLE of the Philippines, the ITUC stated that 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). Children were also 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). The ITUC had also pointed out that about 60 per cent of child soldiers were compelled to enter into the armed groups. 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 notes the Government's information that both government forces and non-state entities maintain a policy of not recruiting children for direct hostilities. There has been no evidence of systematic or forcible recruitment of children by the NPA and the MILF. Children volunteer their support mainly because of the influence of family, peers and community members. It also notes the Government's information that, based on reports from combined sources, including the Department of National Defence, there were 186 children involved in armed conflicts for the period 2001–06. Of this number, 174 children have been demobilized and reunited with their families and brought back to school. Moreover, the DOLE implemented the Community Sala'am (Peace) Corps Project, wherein 300 children between 9 and 21 years of age affected by armed conflict were given education, skills training, employment and livelihood assistance for the period 2005–06. ***While welcoming the measures adopted by the Government to demobilize and rehabilitate children affected by armed conflict, the Committee requests 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. It also requests the Government to continue to provide information on the effective and time-bound measures taken 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 *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, and more than half of them dropped

out of school. The Committee had noted the Government's indication that several draft bills aimed at protecting the rights and welfare of domestic workers were under examination by Congress.

The Committee also notes the ITUC's more recent allegations dated 30 August 2006 based on the "Trafficked into forced labor: Selected cases of domestic workers in the Philippines" study, published in 2006 by the VFF with support from ILO/IPEC. Particularly, the ITUC refers to some examples of physical abuses and injuries suffered by children under 18 years, especially girls employed as domestic workers. It also refers to some examples of children working in hazardous conditions. The ITUC 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 Labor 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 bring the treatment of domestic workers closer to the standards applied to workers in the formal sector. Moreover, domestic workers would be given the right to humane treatment, basic food and shelter, security of employment, minimum wage and prescribed hours of work. Finally, the Bill would ensure the use of written contracts formalizing the terms and conditions of work.

The Committee notes the Government's information during the Conference Committee discussion that, in the framework of the *TBP*, 1,500 children were rescued from domestic labour. It also notes the Government's information that bills filed during the 13th Congress aimed at protecting the rights and welfare of domestic workers were not passed into law. With the 14th Congress, it is expected that these bills will be filed for enactment into law. It also observes that, according to the ILO/IPEC Progress Report 2007, on the *TBP* in the Philippines, 3,224 children were prevented from exploitative child domestic labour (of which 2,423 through the provision of education or training and 801 through other rehabilitative services); and 4,658 children were withdrawn from exploitative child domestic labour (of which 2,091 through the provision of education or training and 2,567 through other rehabilitative services). While observing the successful results achieved under the *TBP*, the Committee expresses its serious concern at the economic and sexual exploitation which continues to be experienced by child domestic workers. ***It requests the Government to redouble its efforts to ensure that child domestic workers under 18 years of age do not perform work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals in line with national legislation and the Convention. The Committee expresses the firm hope that the Domestic Workers' Bill (Batas Kasambahay), which would specifically address the situation of domestic workers, will be enacted soon. It requests the Government to provide information on any developments made in this regard.***

*Article 5. Monitoring mechanisms.* The Committee notes with interest that the Government has adopted a number of measures to monitor the application of the Convention and enforce it. Particularly, it notes the Government's information that the Inter-Agency Council Against Trafficking (IACAT) adopted the National Strategic Plan against Trafficking in Persons 2004–10, which covers the key components of prevention, protection, recovery and reintegration of victims of trafficking. It also notes the Government's information that the Trade Union Congress of the Philippines set up an anti-trafficking project aimed at monitoring and reporting on cases of trafficking. The Committee finally notes the Government's information that the Philippine Center on Transnational Crime (PCTC) is in charge of formulating and implementing a concerted programme of action for all law enforcement agencies, intelligence agencies and other relevant bodies for the prevention and control of trafficking in women and children. Through improved coordination, the PCTC is likewise directed to undertake research and maintain a database on trafficking. Moreover, the Department of Justice (DOJ), with support from UNICEF, has trained a pool of 30 state prosecutors to handle cases involving women and children, with a focus on gender-sensitive and child-friendly investigation procedures and the effective handling and gathering of evidence against perpetrators. The Philippine National Police (PNP) has trained 230 police investigators on the investigation of child trafficking, pornography and prostitution. ***The Committee welcomes these measures and requests the Government to continue providing information on the impact of these measures on eliminating the trafficking of children.***

*Article 7, paragraph 1. Penalties. 1. Trafficking.* The Committee notes the ITUC's allegation that while the Philippine Government has passed the Anti-trafficking in Persons Act of 2003, implementation is still a challenge. Thus, while the new law has increased penalties for child trafficking, there have been only three convictions to date, all of which relate to prostitution.

The Committee notes the Government's information during the Conference Committee discussion of June 2006 that seven criminal cases were being pursued for trafficking. It also notes that, according to information available at the Office, the Philippine Government showed some improvements in arresting, prosecuting and convicting traffickers. In 2006, law enforcement agencies filed 60 new trafficking cases with the DOJ. In addition, Philippine law permits private prosecutors to prosecute cases under the direction and control of a public prosecutor. The Government has used this provision effectively, allowing and supporting an NGO to file 23 cases. According to the same source, the Government is currently (in 2007) engaged in 107 prosecutions of trafficking crimes, with more being investigated. Moreover, the Government has 17 dedicated anti-trafficking prosecutors in the DOJ and 72 additional prosecutors in regional DOJ offices. Finally, the

Philippine Coast Guard, under the Department of Transportation and Communication, searched several ferries in order to identify trafficking victims and recruiters.

2. *Compulsory recruitment in armed conflict.* The Committee had previously noted that, by virtue of sections 4(h) and 10(a) of the Anti-trafficking in Persons Act of 2003, a person who recruits, transports or adopts a child to engage in armed activities in the Philippines or abroad is liable to 20 years' imprisonment and a minimum fine of 2 million pesos. It had also noted that, by virtue of sections 3(a) and 22(b) of Act No. 7610, children under 18 shall not be recruited to become members of the armed forces of the Philippines or its civilian units or other armed groups, nor be allowed to take part in the fighting or used as guides, couriers or spies. ***The Committee once again 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). 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 and domestic work.* The Committee had previously noted that the VFF provides child victims of trafficking with temporary shelter and psychological services. The VFF for the period 2000–04 assisted a total of 3,000 victims of trafficking for prostitution, domestic work or other types of hazardous work.

The Committee notes the ITUC's allegation that the Government's efforts to provide non-formal education and other alternative learning systems for reintegrating child domestic workers in the education system have been largely unsuccessful due to the lack of centres and teachers.

The Committee notes with interest the Government's information that, for the period July 2005–June 2006, the VFF assisted a total of 4,465 child victims of trafficking and child domestic workers. Educational assistance in the form of schools fees, transportation, school supplies and tutorial services were provided. Some of the children housed in the VFF halfway houses were provided with information technology training and other life skills training. The Committee also notes the Government's information that the Manila International Airport Authority (MIAA) and VFF signed on July 2006 a Memorandum of Agreement to build a halfway house for trafficked women and children at the Ninoy Aquino International Airport (NAIA). Moreover, MIAA will construct a halfway house/shelter at the NAIA complex aimed at providing temporary shelter to victims of trafficking trapped at the NAIA. The VFF is being tasked to supervise and manage the various programmes and services for the trafficked victims.

The Committee is also addressing a direct request to the Government concerning certain other points.

## Portugal

### ***Night Work of Young Persons (Industry) Convention, 1919 (No. 6)*** ***(ratification: 1932)***

The Committee notes the information supplied by the Government in its report. It also notes the observations made by the General Confederation of Portuguese Workers (CGTP), the General Union of Workers (UGT) and the Confederation of Trade and Services of Portugal (CCSP).

*Articles 2 and 3 of the Convention. Employment of children in industrial undertakings.* With reference to its previous comments, in which it pointed out that certain provisions concerning the night work of young persons contained in Legislative Decree No. 409 of 1971 were not in conformity with the Convention, the Committee notes that this Legislative Decree has been repealed by Act No. 99/2003 approving the Labour Code [hereinafter Labour Code], which now regulates the night work of young persons.

The Committee notes that section 65(1) of the Labour Code states that it is prohibited to employ a young person under 16 years of age between 8 p.m. and 7 a.m. It also notes that section 65(2) of the Code states that a young person aged 16 and over cannot work between 10 p.m. and 7 a.m. Moreover, under section 65(3) of the Code, a collective agreement may provide that a young person aged 16 or over may work at night in specific sectors of activity, except during the period between midnight and 5 a.m. Finally, section 65(4) of the Labour Code states that a young person aged 16 or over may work at night, including during the period between midnight and 5 a.m., in cultural, artistic, sporting or advertising activities, where there are objective grounds for doing so and on condition that he/she is granted a compensatory period of rest equal to the number of hours worked.

In its comments, the CGTP states that the national legislation is still not in conformity with the Convention. It authorizes the night work of young persons aged 16 and over in particular sectors of activity without specifying the sectors themselves. The use of this possibility might become a widespread habit in practice. The UGT, for its part, indicates in its comments that it is essential not to obscure the fact that very often the conditions in which night work is undertaken may jeopardize the physical and psychological development of young persons or their school attendance. Hence, night work must be strictly controlled in order to put children's interests before economic interests. In addition, the UGT indicates that, in view of the fact that the Convention was adopted in 1919 and ratified by the Government in 1932, some of its provisions are somewhat obsolete. In addition, the CCSP thinks that the provisions of the Labour Code are in conformity with the Convention.

The Government acknowledges in its report that section 65(2) and (3) of the Labour Code of 2003 are not in conformity with the Convention. However, it indicates again that, although some provisions of the Convention were justified at the time it was adopted, they no longer reflect the current reality of the world of work. Changes in the organization of work now afford greater protection of safety and health, in particular for young workers. The Government also states that the provisions of the Labour Code on the night work of young persons comply with Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work. In addition, the Government recalls the decision taken by the Governing Body to revise Conventions Nos 6, 79 and 90 and hopes that this revision will take place.

While noting the information supplied by the Government, the Committee observes that the requirements of Directive 94/33/EC cannot release the State from its obligations under the Convention since the latter has not yet been revised. The Committee reminds the Government that, under *Article 2, paragraph 1*, of the Convention, young persons under 18 years of age shall not be employed during the night in any industrial undertaking, other than an undertaking in which only members of the same family are employed and in the cases listed in *Article 2, paragraph 2*. It also reminds the Government that *Article 3, paragraph 1* states that the term “night” signifies a period of at least 11 consecutive hours, including the interval between 10 p.m. and 5 a.m. ***The Committee reminds the Government that it should take the necessary measures to bring the national legislation into conformity with the Convention on this point.***

*Part V of the report form. Application of the Convention in practice.* The Committee notes the information supplied by the Government to the effect that, between June 2000 and May 2007, 20 serious contraventions of the legislation on the night work of young persons were reported and proceedings have been initiated. ***The Committee requests the Government to continue to supply information on the application of the Convention in practice, particularly by supplying statistics on the number and nature of contraventions reported, investigations, prosecutions, convictions and penalties imposed.***

## Romania

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1975)**

The Committee notes the Government’s report. ***It requests the Government to supply information on the following points.***

*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 response that no measures had been taken in this regard. 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. ***The Committee therefore once again requests 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.***

*Article 3, paragraphs 1 and 2. Hazardous work.* The Committee had previously noted that section 13(4) of the Labour Code, which prohibits arduous or hazardous work for persons under the age of 18, does not prohibit admission to employment or work that is likely to jeopardize the morals of young persons. Noting the Government’s indication that the list of hazardous types of work was in the process of modification, the Committee had expressed its hope that the new list would contain the types of work that are likely to jeopardize the morals of young persons, as required by *Article 3, paragraph 1*, of the Convention. The Committee notes with satisfaction the Government’s indication that it has adopted Order No. 753/2006 which now provides protection to young persons under 18 years from work likely to harm their safety, physical, mental or moral health, or social development. It also notes that, according to section 8(2) of the above Order, young persons shall be prohibited from work which is beyond their physical or psychological capacity; work involving harmful exposure to toxic, carcinogenic and harmful agents; work involving exposure to radiation; work involving risk of accidents; work exposed to extreme cold or heat, noise or vibration; and finally provides a list of work and processes which are likely to entail specific risks for young people.

*Article 6. Apprenticeship.* Following its previous comments, the Committee notes with interest the Government’s information that a new Law No. 279/2005 concerning apprenticeship at the workplace has been adopted by the Government. It notes that, according to section 5(1) of the Law No. 279/2005, any person of at least 16 years of age could be employed as an apprentice at the workplace in the occupation for which an apprenticeship is organized. Subsection (2) of section 5 further provides that an apprenticeship contract may be concluded by a person over 15 years, upon written approval of his/her parents or legal representatives, for activities that suit his/her physical development, skills and knowledge, unless it is likely to harm his/her health, development and occupational training.

*Article 7, paragraph 3. Determination of light work.* The Committee had previously noted the Government’s information that the national legislation does not determine light work activities and had requested the Government to take the necessary measures in this regard. The Committee notes the Government’s information that the National Steering Committee for Preventing and Combating Child Labour has drawn up a draft Decision on Hazardous Works by Children based on the information gathered by a working group initiated by the Labour Inspectorate and the National Authority for the Protection of Child’s Rights, representatives of ministries, trade union confederations and employers’ organizations as

well as some NGOs in the field. The Government states that any activity or work which is not included in this draft Decision shall be considered as light work which young persons between 15 and 18 years of age are allowed to perform. **The Committee requests the Government to supply a copy of the Decision on Hazardous Works by Children, as soon as it is adopted.**

*Article 9, paragraph 3. Registers of employment.* The Committee notes the Government's information that Decision No. 161/2006 establishes the methodology of drawing up and keeping a general register of employees. It also notes 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, type of contract, etc. The employer shall send this register to the territorial labour inspectorate within 20 days after hiring the worker. **The Committee 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 that the Government has supplied statistics on the employment of children and young persons, and inspections and cases reported. It notes that in 2005, the labour inspectors carried out 33,852 inspections and identified 96 young people aged between 15 and 18 years working without a legal employment contract, and ten children under 15 years were found working. In 2006, the labour inspectors conducted 106,421 inspections, identified 244 young persons between the ages of 15 and 18 working illegally, and imposed penalties on 229 employers for illegally using young people at work. It also notes that during 2007, the territorial labour inspectorates submitted 119 complaints regarding the violation of the Labour Code; for 103 cases the trials were under way; and for three cases administrative fines of 500 to 800 leu (ron) were imposed. **The Committee asks 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)

The Committee takes note of the Government's report. **It requests the Government to supply further information on the following points.**

*Article 2, paragraph 1, of the Convention. 1. Scope of application.* The Committee had previously noted that section 63(1) of the Labour Code prohibits children under 16 years of age from concluding a labour contract. It had asked the Government to supply information on the measures taken or envisaged to ensure the application of the Convention to all types of work outside an employment relationship. The Committee notes the Government's statement that there are many cases of illegal employment of minors and violation of their labour rights in the informal economy. These include minors who wash cars, trade and perform auxiliary work. In this regard, the Committee once again reminds the Government that the Convention applies to all sectors of economic activity and covers all forms of employment or work, whether or not there is a contractual employment relationship and whether or not the work is remunerated. **The Committee therefore once again requests the Government to take the necessary measures to ensure that the protection established by the Convention is ensured for children carrying out an economic activity without a labour contract, such as self-employed children and children working in the informal economy.**

*2. Minimum age for admission to employment or work.* The Committee had previously noted that section 63(1) of the Labour Code states that an employment contract may be concluded only with a person of at least 16 years of age. However, it had noted that according to section 63(2) of the Labour Code, a person of 15 years of age who has completed the basic general education or left the general educational establishment, may work. Noting that the minimum age for admission to employment or work of 16 years had been specified by the Russian Federation at the time of ratification, the Committee 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 with satisfaction the Government's information that the Labour Code, as amended by Federal Act No. 90-FZ of 30 June 2006, stipulates that labour contracts may be concluded by persons aged 15 only for light work not likely to jeopardize their health, as long as they have completed basic general education and are continuing to participate in a non-classroom-based programme of general education, or have left an institution of general education in accordance with the Federal Law.

*Part V of the report form. Practical application of the Convention.* Following its previous comments, the Committee notes that, according to the comprehensive statistical information provided by the Government, from 2004 to 2006 the employment rate among young persons between 15 and 17 years of age has fallen from 4.1 to 3.3 per cent. In this regard, statistics on the number of children between 15 and 17 years who study and work, disaggregated by educational level and sex, indicate that the number of children working were 293,070 in 2004, 262,160 in 2005, and 219,952 in 2006. They were mainly found working in qualified work in agriculture, forestry and hunting. **The Committee requests the Government to continue to supply information on the practical application of the national legislation giving effect to the Convention, including extracts from official reports and information on the number and nature of contraventions reported, especially with regard to children under 16 years of age working in the informal sector.**

The Committee is also addressing a direct request to the Government concerning certain other points.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (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 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* The Committee noted that, according to the communication of 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 taking place; women are generally forced to work as prostitutes while men are trafficked into agricultural or construction work. There are said to be confirmed cases of children being trafficked for sexual exploitation. The Committee further noted that the Committee on the Rights of the Child in its concluding observations (CRC/C/15/Add.274 of 30 September 2005, paragraph 80) while welcoming the recent introduction of norms prohibiting the trafficking of human beings in the Criminal Code, was concerned that not enough was being done to effectively implement these provisions. The Committee on the Rights of the Child also expressed its concern that protection measures for victims of trafficking of human beings were not fully in place and that reported acts of complicity between traffickers and state officials were not being fully investigated and punished.

The Committee observed that section 127.1 of the Criminal Code prohibits the sale and trafficking in human beings, defined as the purchase and sale of persons or their recruitment, transport, transfer, hiding or receipt, if committed for the purposes of exploitation. Subsection (2) of section 127.1 provides for a higher penalty when this offence is committed in relation to a known minor (defined in section 87 as a person aged 14 to 18 years). The Committee also noted that subsection (2) of section 240 of the Criminal Code prohibits transporting another person across the state border of the Russian Federation for the purposes of engaging that person into prostitution or illegal detention abroad. A higher penalty is provided when this offence is committed against a minor.

The Committee noted the Government's information that during the period 2003–05, work has been under way on a draft Law on Combating Trafficking in Human Beings which is based on the Palermo Protocol and provides for appropriate measures to ensure legal protection and social rehabilitation for victims of trafficking. The Committee also noted the Government's information that in 2002, ten cases of criminal proceedings for trafficking in minors were instituted, and 21 in 2003. In 2004, three cases of trafficking in minors were uncovered, of which two involved children aged between 1 and 3 years, and the other involved a child of 16 years.

The Committee consequently noted that, although the trafficking of children for labour or sexual exploitation is prohibited by law, it remains an issue of concern in practice. It recalled that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of children is considered to be one of the worst forms of child labour and is therefore prohibited for children under 18 years of age. ***The Committee requests the Government to take the necessary measures as a matter of urgency to ensure that persons who traffic in children for labour or sexual exploitation are in practice prosecuted and that sufficiently effective and dissuasive penalties are imposed. In this regard, it requests the Government to continue to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of the legal prohibitions on the sale and trafficking of children. The Committee also asks the Government to inform it on the progress in the elaboration of the draft Law on Combating Trafficking in Human Beings and to provide a copy thereof once it has been adopted.***

*Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour.* The Committee noted the Government's information that efforts are being made to improve collaboration between the media and non-governmental organizations in combating cross-border trafficking in women and children. Thus, it is becoming increasingly common for the major television networks to broadcast programmes on trafficking in women and children, shedding light on this problem and explaining the work done by internal affairs officials to identify and prosecute traffickers in accordance with the new provisions of the Criminal Code. It also noted that in 2004, the organization "Independent voluntary assistance centre for victims of sexual assault" ("Sisters") helped to conduct a series of one-day training sessions on the theme of "Making general use of Russian and international experience in combating trafficking in persons". The Committee further observed that the association of women's crisis centres "Let's stop violence!" has opened a national information line on the problem of preventing trafficking in persons. Its purpose is to provide information on Russian and international organizations that provide assistance to victims of trafficking in the Russian Federation and abroad, Russian embassies and consulates abroad, and personal security plans for persons travelling abroad. ***The Committee asks the Government to provide information on the impact of the above measures on preventing the sale and trafficking 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 noted the Government's detailed information on a system of social institutions which provide for the rehabilitation and social integration of children engaged in the worst forms of child labour. In particular, it notes that, compared to 2003, the number of establishments functioning within the social protection bodies of the constituent units of the Russian Federation and local self-government bodies increased by 144, reaching 3,373 by 1 January 2005 (the corresponding figures were 3,059 in 2002 and 3,229 in 2003). It also noted that social rehabilitation centres for minors, centres to provide social assistance to families and children, social shelters for children and adolescents, centres for children left without parental care, telephone hotlines for emergency psychological assistance and other measures are being actively developed. The development of social rehabilitation centres for minors was stepped up in 2004 (with the addition of 163 new centres compared to the year 2002). The Committee also noted the Government's information that in recent years, the Russian law enforcement authorities have been collaborating closely with organizations which help victims of violence. For example, the National Central Office of Interpol receives information from crisis centres on cases of unlawful detention and sexual exploitation abroad of Russian women, including under-age girls. ***The Committee requests the Government to continue to provide information on effective and time-bound measures taken to assist child victims of trafficking and to provide for their rehabilitation and social integration.***

*Article 8. International cooperation and assistance. 1. International cooperation.* The Committee noted that the Russian Federation is a member of Interpol, which helps cooperation between countries in the different regions especially in the fight against trafficking of children. The Committee also noted that the Russian Federation has ratified the United Nations Convention against Transnational Organized Crime and its supplementary Protocols against Smuggling of Migrants by Land, Sea and Air, as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. ***The Committee asks the Government to provide information on any steps taken to assist other member States or on assistance received giving effect to provisions of the Convention through enhanced international cooperation and assistance, in particular, on the issue of combating the trafficking of children.***

2. *Regional cooperation.* The Committee noted the Government's information that since 1998, joint operations have been under way with the countries of the Council of Baltic Sea States with a view to preventing cross-border smuggling of children. Under the auspices of that body's executive committee, so-called "contact officers", including some from the Russian Ministry of Internal Affairs, are dealing with specific cases requiring action to prevent trafficking in children for the purpose of sexual exploitation. Following a decision by the Interpol Operative Committee for the Baltic Sea States, available data on the cross-border smuggling of children for the purpose of prostitution is being analysed and the principal trafficking routes are being mapped. ***The Committee asks the Government to continue to provide information on regional cooperation with the countries of the Council of Baltic Sea States with a view to preventing cross-border trafficking of children.***

The Committee is also addressing a direct request to the Government concerning other points.

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

## Saudi Arabia

### ***Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1978)***

The Committee notes the Government's report.

In its previous comments, the Committee had noted the Government's indication that the Labour Code was amended so as to be in conformity with *Article 2 of the Convention*, which provides for a period of at least 12 consecutive hours during which children and young persons are prohibited from working. The Committee had requested the Government to send a copy of the legislative text that amended the Labour Code.

The Committee notes with interest that section 163 of the new Labour Code, supplied by the Government, specifies the prohibition of the employment of young persons at night for at least 12 consecutive hours, except in cases decided by ministerial order. However, it notes that the cases in which exceptions to the prohibition of night work can be decided by ministerial order do not seem to be specified by the Labour Code.

The Committee reminds the Government that exemptions from the prohibition of night work may only be allowed for young persons between *16 and 18 years of age* under the conditions prescribed by *Article 2, paragraph 3*, of the Convention. ***The Committee requests the Government to take the necessary measures to ensure that the exemptions from the prohibition of night work of young persons decided by ministerial order pursuant to section 163 can only be authorized for young persons between 16 and 18 years of age under the conditions set out in Article 2, paragraph 3, of the Convention.***

## Senegal

### ***Night Work of Young Persons (Industry) Convention, 1919 (No. 6) (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 2 of the Convention.* In the comments that it has been making for more than 30 years, the Committee noted that sections 3 and 7 of Local Order No. 3724/IT of 22 June 1954 on child labour, which allow exceptions to the prohibition of night work by young persons under 18 years of age, are not in conformity with *Article 2* of the Convention. In its report in 2000, the Government acknowledged the non-conformity of these sections and undertook to bring its regulations into accord with international instruments. The Committee noted the information provided by the Government in its report to the effect that, following seminars, draft texts to implement the new Labour Code have been prepared, including a draft Order establishing specific conditions for work by young persons, which was attached to the report.

The Committee noted that under the terms of section 3(2) of the draft Order, young persons cannot be employed in any night work as defined by section L.140 of the Labour Code, namely between 10 o'clock in the evening and 5 o'clock in the morning. Under section 1 of the draft Order, the term *child* means any person under 18 years of age. The Committee noted that, as it is worded, section 3 of the draft Order gives effect to the provisions of *Article 2, paragraph 1*, of the Convention.

However, it noted with regret that section 7 of the draft Order takes up in their entirety the provisions of section 7 of Local Order No. 3724/IT of 22 June 1954, which permits exceptions from the prohibition of night work by young persons which are broader than those authorized by *Article 2, paragraph 2*, of the Convention. In its report, the Government stated that it has to submit the draft Order to the National Advisory Council of Labour and Social Security for its opinion before the definitive texts receive the signature of the competent authorities. The Committee trusted that the Government would take the necessary measures to bring section 7 of the draft Order into conformity with *Article 2, paragraph 2*, of the Convention by providing that the derogation from the prohibition of night work for young persons of 16 years and over concerns only the industrial workplaces in which processes are carried on continuously as enumerated in this provision, namely: manufacture of iron and steel; processes in which reverberatory or regenerative furnaces are used, and galvanizing of sheet metal or wire (except the pickling process); glass work; manufacture of paper; manufacture of raw sugar; and gold mining reduction work.

***The Committee once again requests the Government to keep it informed of any developments relating to the entry into force of the draft Order establishing specific conditions of work by young persons.***

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

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

The Committee notes the Government's report. It also notes the observations made by the National Confederation of Employers of Senegal (CNES) and the National Confederation of Workers of Senegal (CNTS) concerning certain allegations of failure to apply the Convention, and the Government's comments in reply to the issues raised by the CNES and the CNTS.

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee noted that, according to the report on the ILO/IPEC National Programme for the Elimination of the Exploitation of Children at Work in Senegal (1998–2001), children who are usually engaged in production mainly work as family helpers (78 per cent), employed persons (9 per cent), apprentices (6 per cent) and own-account workers (5 per cent). The ILO/IPEC report also indicated that many girls are engaged as domestic workers, of whom a certain number were aged between 6 and 14 years. The Committee requested the Government to continue providing information on the manner in which the Convention was applied in practice.

The Committee notes with interest that the Government is participating in the ILO/IPEC project entitled "Contribution to the abolition of child labour in French-speaking Africa", in which Benin, Burkina Faso, Madagascar, Mali, Morocco, Niger and Togo are also participating. The general objective of this project is to contribute to the abolition of child labour by strengthening the capacities of national partners, raising awareness and social mobilization and direct action to prevent and combat child labour. The Committee also notes with interest that the Government is participating in the ILO/IPEC *Time-bound Programme (TBP)* on the worst forms of child labour. It observes that, in the context of the two above projects, the Government has adopted a strategy for the implementation of national initiatives to combat child labour through education, vocational training and apprenticeship. The Committee further notes that in 2004 several regional committees to combat child labour were established in the various regions of the country. Moreover, according to the activity reports for the ILO/IPEC project "Contribution to the abolition of child labour in French-speaking Africa" of 2006, a national survey of child labour was carried out in Senegal and the data collected are currently being analysed. The Committee greatly appreciates the measures taken by the Government to abolish child labour, and it considers these measures as an affirmation of a political will to develop strategies to combat this problem. ***It therefore strongly encourages the Government to pursue its efforts to combat child labour and requests it to provide information on the implementation of the projects referred to above, and on the results achieved in terms of the progressive abolition of child labour and access to education. The Committee also requests the Government to provide information on the national survey of child labour when the data has been analysed.***

*Article 2, paragraph 1. 1. Scope of application.* In its previous comments, the Committee noted that, under the terms of sections L.2 and L.145 of the Labour Code and section 2 of the Order of 6 June 2003 respecting child labour, work carried out by children on their own account is not covered by the protection provided for in the Labour Code and the Orders respecting child labour. It requested the Government to provide information on the manner in which the protection envisaged by the Convention was guaranteed for children exercising an economic activity on their own account. In its report, the Government indicates that children who work on their own account are governed by the provisions of the Code of Civil and Commercial Obligations, as well as those of the OHADA Uniform Act relating to General Commercial Law. Under the terms of the latter, a self-employed worker is assimilated to a trader and no child may be a self-employed worker due to her/his status as a minor who does not have the capacity to enter freely into contracts. According to the Government, although the Senegalese legislation excludes any form of self-employment for children, in practice poverty has facilitated the development of such activities among children (shoe-cleaners, hawkers), who carry them on totally illegally. In this respect, every effort is made to remove children from these activities and give them a healthy occupation. According to the Government, the choice of this strategy, rather than the implementation of measures to protect children who work outside an employment relationship, is more effective in combating child labour. ***Noting the indications provided by the Government, the Committee requests it to provide information on the measures adopted to remove from work children who are not bound by an employment relationship, such as those working on their own account.***

*2. Minimum age for admission to employment or work.* In its previous comments, the Committee noted that section L.145 of the Labour Code provides for the possibility of derogating from the minimum age for admission to employment by order of the minister responsible for labour, taking into account local circumstances and the tasks to be performed. The Committee reminded the Government that it had specified a minimum age of 15 years when ratifying the Convention and that the derogation from the minimum age for admission to employment under section L.145 of the Labour Code was not in conformity with this provision of the Convention. It requested the Government to provide information on the measures adopted or envisaged to bring its legislation into conformity with the Convention.

The Committee notes that the CNTS indicates in its comments that a bill should be prepared rapidly to correct the provisions of section L.145 of the Labour Code in relation to the provision that is made for derogation from the minimum age for admission to employment. The Committee also notes the information provided by the Government in its report that it is aware that the derogation from the minimum age for admission to employment set out in section L.145 of the Labour Code is contrary to the provisions of Convention No. 138. It was this which led it to revise the legislation with a view to making the necessary corrections. Accordingly, a legislative study was carried out in the context of the ILO/IPEC *TBP*, which identified the shortcomings in the Senegalese legislation in relation to the Convention. The conclusions of

this study were submitted to the competent authorities so that they could take the relevant measures. However, before any decision is taken in this respect, the Government has established a programme to raise the awareness of parliamentarians and public authorities. The Committee also notes the Government's indication that no order has been adopted granting a derogation from the minimum age for admission to employment or work and determining the nature of the light work which may be undertaken in the family context. **The Committee hopes that the work undertaken by the competent authorities will result in an amendment to section L.145 of the Labour Code in the near future with a view to bringing it into conformity with the Convention by only providing for derogations from the minimum age for admission to employment or work in the cases envisaged by the Convention. It requests the Government to provide information on any new developments in this respect.**

*Article 2, paragraph 3. Age of completion of compulsory schooling.* With reference to its previous comments, the Committee notes with interest that Act No. 2004-37 of 15 December 2004 amending and supplementing the Framework Act for National Education No. 91-92 of 16 February 1991 added a section 3bis to this latter Act providing that schooling shall be compulsory and free in public educational establishments for all children of both sexes aged between the ages of 6 and 16 years.

*Article 3, paragraph 3. Admission to hazardous work as from the age of 16 years.* In its previous comments, the Committee noted that section 1 of Order No. 3748/MFPTEOP/DTSS of 6 June 2003 respecting child labour provides for a minimum age of 18 years for admission to types of hazardous work. It however noted that, under the terms of Order No. 3750/MFPTEOP/DTSS of 6 June 2003 establishing the types of hazardous work prohibited for children and young persons [hereinafter, Order No. 3750 of 6 June 2003], certain types of hazardous work could be performed by persons aged under 16 years. For example, under the terms of section 7 of Order No. 3750 of 6 June 2003, work in underground tunnels in mines, open cast mines and quarries was permitted for boys under the age of 16 years. The Committee also noted that it was permitted to employ young persons of 16 years of age on the following types of work: work using circular saws, provided that authorization in writing has been obtained from the labour inspector (section 14), operating vertical wheels, winches and pulleys (section 15), operating steam valves (section 18), work performed on mobile platforms (section 20) and performing hazardous feats in public performances in theatres, cinemas, cafes, circuses or cabarets (section 21). The Committee noted that, on the one hand, the upshot of certain of these provisions is that the minimum age for admission to hazardous types of work is under 16 years of age and, on the other, that the conditions envisaged in *Article 3, paragraph 3*, of the Convention did not appear to be complied with.

The Committee notes that the CNTS indicates in its comments that, with regard to the admission of young persons under 16 years of age to hazardous types of work, it wishes to be consulted and that it is urgent to implement a specific and appropriate training policy in the branches of activity covered by the Convention. The Committee notes the information communicated by the Government according to which it is aware of the non-conformity of certain provisions of the Order determining the types of hazardous work prohibited for children and young persons with *Article 3, paragraph 3*, of the Convention. Accordingly, in the context of the current reform of the law and regulations, all these aspects and contradictions will be corrected so as to ensure coherence between the provisions of the Convention and those of the national legislation. The Committee also notes the information provided by the Government that, with regard to the health and safety of children, 13 legal texts are currently being adopted under the Labour Code and take into account the situation of children who are authorized to work. However, according to the Government, there are no specific provisions respecting children since, once they are authorized to work in types of work deemed to be hazardous, they benefit from the same protection as that afforded to adults. Furthermore, the adequate specific instruction in the relevant branch of activity envisaged by the Convention does not currently exist. The Committee reminds the Government that, under the terms of *Article 3, paragraph 3*, of the Convention, the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific training in the relevant branch of activity. **It hopes that the current legislative reform will take into account the comments made above and requests the Government to consult the organizations of employers and workers. The Committee requests the Government to provide information on any new development in this respect.**

## Sierra Leone

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

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 expresses the hope again 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

### **Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1971)**

The Committee takes note of the Government's report.

*Article 2 of the Convention. Thorough medical examination for fitness for employment.* In the comments that it has been making for several years, the Committee has pointed out that the national legislation contains no provision establishing that minors under 18 years of age must undergo a thorough medical examination for fitness for employment before being employed. The Government indicated that *Article 2* of the Convention is applied, inter alia, by the provisions of section 37(3) of Royal Decree No. 39 of 17 January 1997 on occupational health services and section 22 of Act No. 31/1995 on the prevention of occupational risks. The Committee observed that it could not be inferred from the abovementioned provisions that a thorough medical examination was a requirement for a worker to be employed, and asked the Government to take steps to bring its legislation into conformity with the Convention.

In its report, the Government states that, section 6(1) of Legislative Decree No. 1/1995 of 24 March 1995, approving the revised text of the Act on the statute of workers, provides that it is forbidden to admit minors under 16 years to employment. It also indicates that section 6(2) prohibits workers under 18 years of age from performing night work and any activity deemed insalubrious or hazardous for their health. The Government indicates in this connection that the Decree of 26 July 1957, which regulates prohibited work, provides that girls and boys under 18 years of age may not be employed in the types of hazardous work listed in the Decree. It also refers to section 27(1)(1) of Act No. 31/1995 on the prevention of occupational risks under which, before assigning minors under 18 years of age to a job, the employer must conduct an appraisal of the posts to which workers are to be assigned, and the appraisal must cover in particular special risks for their safety, health and development that may arise from a lack of experience, knowledge or maturity. The Government likewise refers to section 27(1)(2) of Act No. 31/1995 which provides that, on the basis of an assessment of the risks that the job involves for the young person assigned to it, the employer must take steps to protect the latter's safety and health, taking into account the specific risks that arise from lack of experience and from immaturity in terms of awareness of the risks or the fact that the young person is still developing. According to the Government, since under Spanish law it is forbidden for young persons under 16 years of age to work (section 6 of Legislative Decree No. 1/1995 of 24 March 1995), since the list of types of hazardous work prohibited for minors under 18 years of age has been drawn up (Decree of 26 July 1957) and since all workers are entitled to have their health protected (section 22 of Act No. 31/1995), no one under 18 years of age may carry out hazardous work. It follows that a specific medical examination for fitness for employment for minors under 18 years of age cannot be established for work which they are prohibited by law from carrying out.

While taking due note of the Government's information, the Committee observes that Spain's national legislation allows minors over 16 years of age to be employed under certain conditions (section 3 of the Decree of 26 July 1957 and section 2 of the Ordinance of 28 January 1958). Noting the statistics of breaches of the safety and health protection for minors of 16–18 years in the industries reported by the inspectorate for labour and social security for the years 2001–05, the Committee observes that the possibility does exist for minors to work in enterprises covered by the Convention (*Article 1*). *It accordingly asks the Government to indicate how the appraisal of posts and their inherent risks established in section 27(1)(1) and (2) of Act No. 31/1995 makes it possible to ensure that minors of 16–18 years shall be recognized as fit for work before entering employment, taking into account the fact that such fitness for work shall in any event be recognized by a thorough medical examination. Noting that the abovementioned statistics do not specify the types of breaches committed in the various industries, the Committee requests the Government to continue to provide information on the practical effect given to the Convention including, for example, data on the number and nature of the offences reported and the penalties applied.*

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1971)**

*The Committee asks the Government to refer to the comments made in its observation on the application of Convention No. 77.*

## Sri Lanka

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's report. *It requests the Government to supply further information on the following points.*

*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, it 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.

The Committee notes the Government's information that, by virtue of section 20A of the Employment of Women, Young Persons, and Children (EWYPC) Act, as amended by the EWYPC (Amendment) Act of 2006, the Minister of Labour is empowered to issue regulations on the types of hazardous work prohibited to children. These will include, amongst others, "any work connected with armed conflict". The employment of children in types of hazardous work shall be guilty of an offence and be liable to a fine or to imprisonment for not more than 12 months, or both, and to pay compensation to the victim of the offence. The Committee also notes that, with regard to the measures taken to stop the recruitment of children under 18 years in armed conflict, the Government refers to the UNICEF mandate to monitor child rights violations of the ceasefire agreements and to compile and verify data on child recruitment.

The Committee further notes the Report of the Secretary-General on 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), based on that report. It notes that, according to that report, despite previous commitments by the LTTE, that group continues to use and recruit children. In addition, a particularly disconcerting development in 2005 and 2006 is the increase in abductions and recruitment by the Karuna faction. In particular, UNICEF has received reports of 541 children being recruited by the LTTE, of which 68 per cent are boys and 32 per cent are girls, both of an average age of 16 years. The LTTE notified UNICEF that 362 children had been released from its ranks. According to UNICEF data, as of 31 October 2006, out of the 5,794 total cases of child recruitment since April 2001, 1,598 recruited children are believed to remain with the LTTE. However, it is probable that the UNICEF figures reflect approximately one third of the total cases of recruitment. Moreover, UNICEF has received reports of 164 children being recruited by the Karuna faction, of which 142 are believed to remain in the ranks of this faction (Secretary-General's Report, paragraphs 11–27, pages 4–10). Besides the recruitment of child soldiers, there were also allegations of other grave violations against children by all parties to the conflict. According to the Secretary-General's Report, the Sri Lanka Monitoring Mission (SLMM) indicated that a significant number of the 1,135 civilians killed during the conflict were children. The acceleration of violence since May 2006 has resulted in an increase of child casualties. Several of the children killed have been utilized by the LTTE as child soldiers. Also, the SLMM received 237 complaints on child abductions, mostly against the LTTE and the Karuna faction (Secretary-General's Report, paragraphs 30–37, pages 10–12). Moreover, weaknesses of state institutions, such as the police and the judicial system, impede the effective and timely verification and investigation of cases, the identification and punishment of the perpetrators of grave violations (Secretary-General's Report, paragraph 62, pages 17–18).

The Committee observes that, although the forced or compulsory recruitment of children in armed conflict is prohibited by law, it remains a serious issue of concern in practice. It shares 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. ***The Committee requests 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 is eliminated. It also requests the Government to pursue its efforts to ensure that children under 18 years are released from the ranks of the LTTE and the Karuna faction, in particular, in any future peace negotiations. It finally 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.***

*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 further 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 notes 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 have recorded 341 cases of child trafficking for commercial sexual exploitation from January to June 2006. Out of these, 13 cases regarded child procuring and 108 cases concerned cruelties inflicted on children. In the case of child trafficking, it was revealed that 70 per cent of these cases concerned boys. The Committee also observes that the Government has taken measures to combat the commercial sexual exploitation of children, especially paedophilia, through the NCPA and Cyber Watch activities. More than 40 local and foreign paedophiles have been prosecuted. ***The Committee requests the Government to redouble its efforts in enforcing the legislation on commercial sexual exploitation by ensuring that sufficiently effective and dissuasive penalties are imposed in practice on persons who use, procure and offer children under 18 years of age for commercial sexual***

*exploitation. It also requests the Government to continue 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 had previously noted that Sri Lanka is one of the three countries included in the ILO/IPEC TICSAs Programme, launched in June 2000. It had noted that TICSAs was moving into Phase II (TICSAs II) with the main objective of preventing 2,000 girls and boys from being trafficked into exploitative forms of employment. The Committee notes that TICSAs II ended in March 2006. It notes with interest that, according to the report entitled “Final Evaluation – Combating Child Trafficking for Labour Exploitation – TICSAs II Project in Sri Lanka” of February 2006 (TICSAs II Final Evaluation Report), supplied by the Government, TICSAs II achieved the following objectives:

- (a) a legal framework on trafficking has been reviewed to include trafficking for exploitative labour;
- (b) the capacity of government, employers’ organizations, trade unions, NGOs and other relevant stakeholders has been strengthened, enabling them to plan, implement and monitor programmes against trafficking;
- (c) the capacities of vocational training institutions have been strengthened;
- (d) children and families in high-risk areas have been assisted in order to reduce their vulnerability to trafficking;
- (e) a number of child victims of trafficking have been rehabilitated;
- (f) the capacity of the relevant institutions to provide services to rehabilitate and reintegrate child victims of trafficking has been improved.

*Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Child trafficking.* The Committee had previously noted that various projects aimed at preventing trafficking were implemented under TICSAs II. It notes with interest that, according to the Government’s report and the TICSAs II Final Evaluation Report, the following projects have been implemented under TICSAs II:

- (a) “Cyber Watch” activities aimed at strengthening the anti-trafficking and anti-paedophilia strategy of the NCPA;
- (b) training of 40 surveillance staff by Scotland Yard experts on child trafficking;
- (c) awareness-raising campaigns promoted by the Ceylon Workers’ Congress aimed at preventing 2,000 vulnerable children from trafficking and strengthening the capacity of 100 social mobilizers in plantations to eliminate child trafficking; and
- (d) various activities aimed at preventing the involvement of children in the worst forms of child labour through formal and non-formal education and vocational training.

These activities included various training programmes organized by the Don Bosco Children and Youth Centres at Nochciyagama and Murunkan. In the Nochciyagama centre, education and vocational training were provided to more than 3,000 children under 18 years and in the Murunkan Training Centre, 235 children attended remedial classes. Moreover, vocational training activities were organized by the Ceylon Workers’ Congress whereby vocational training was provided to 200 children. Finally, various other training programmes in the formal sector (including masonry, carpentry, electrical wiring, sewing), and in the rural skills sector (home gardening, animal husbandry, food processing) were organized. A total of 1,679 girls and 821 boys benefited from these programmes between 2003 and 2007. There are currently 3,500 children enrolled in ongoing training.

*Clause (b). Direct assistance for the removal of children from the worst forms of child labour. Child victims of trafficking.* Following its previous comments, the Committee notes that, according to the TICSAs II Final Evaluation Report, creating supportive rehabilitation and reintegration services for trafficked and abused children has been the most challenging component of TICSAs II. The following measures have been taken under TICSAs II to rehabilitate child victims of trafficking: (a) psychological assistance, counselling, and other rehabilitative measures were provided by the NCPA in two rehabilitation centres in coordination with a local NGO to child victims of trafficking (148 children have been rehabilitated); (b) establishment by the Ceylon Workers’ Congress of 35 community centres, and 62 children’s clubs to provide various rehabilitative services to vulnerable children; and (c) discussion between the Ministry of Women’s Empowerment and Social Welfare and the ILO on the development of child-friendly guidelines for the rescue, rehabilitation and reintegration of child victims of trafficking. ***The Committee encourages the Government to pursue its efforts in order to rehabilitate child victims of trafficking and reintegrate them in their communities. It also requests the Government to continue to provide information on the number of child victims of trafficking who have been rehabilitated under the abovementioned and other programmes.***

*Clause (d). Identify and reach out to children at special risk. 1. Children who have been affected by armed conflict.* The Committee had previously noted that various programmes were adopted between 2004 and 2005 with the assistance of ILO/IPEC in order to address the problems of children involved in armed conflict, especially by providing them with vocational training. It notes with interest the Government’s information that among the 3,500 children enrolled in ongoing vocational training, 453 are former child soldiers. The Committee notes that, according to the information available at the Office, UNICEF, in collaboration with the UNHCR, WHO, WFP, ICRC, international and national NGOs and government partners, is continuing to take measures to address the situation of children affected by armed conflict and prevent them from being involved in the worst forms of child labour, especially by providing them with education (Catch-

Up Education), health services, and various support services. *The Committee requests the Government to pursue its efforts, in collaboration with UNICEF and other international and national partners, to rehabilitate and reintegrate former child combatants. It also requests the Government to provide data on the number of former child combatants who have been rehabilitated and reintegrated in their communities.*

2. *Children affected by the tsunami.* The Committee notes the Government's information 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". Under this project, started in 2006, the NCPA adopted measures to raise awareness on the worst forms of child labour among 600 families of tsunami-affected children. It also provided psychosocial care and support to approximately 1,000 children in the six drop-in centres constructed in tsunami-affected areas. *The Committee requests the Government to continue to provide information on the implementation of the NCPA project to prevent tsunami-affected children and orphans from trafficking into exploitative employment, and the results achieved.*

The Committee is also addressing a direct request to the Government concerning other points.

## Sudan

### Worst Forms of Child Labour Convention, 1999 (No. 182) (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 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 Government's information that, during the period from March to May 2004, the CEAWC was able to retrieve, with the Government's funding, more than 1,000 abductees who rejoined their families, including those in the areas controlled by the Sudan People's Liberation Army (SPLA).

The Committee noted the Government's information during the Conference Committee discussion of June 2005 according to which the CEAWC has dealt with 11,000 of the 14,000 cases of abduction and about 7,500 persons have been retrieved in 2004–05 compared with 3,500 from 1999 to 2004.

The Committee also noted the information contained in the ITUC's communication of 7 September 2005 that the signing of a comprehensive Peace Agreement in January 2005, the inauguration of a new Government on 9 July 2005 and the adoption of the interim Constitution provide an historic opportunity for the new Government of Sudan to resolve the problem of abductions, but it will not automatically lead to an end of abductions and the exaction of forced labour. With regard to the Government's statement during the Conference Committee of 2005 that "the case was closed and there were no more abductions", the ITUC alleges that it has been informed about abductions leading to forced labour and repeated rape amounting to sexual slavery and forced prostitution. The Committee also took note of the Government's reply of November 2005, according to which 108 abducted children have been retrieved by the CEAWC.

The Committee 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 noted the Government's information that section 32 of the Act on the Child of 2004 specifically prohibits "the employment of children in forced labour, sexual or pornographic exploitation, illegal trade, or armed conflict". The Committee also noted that various provisions of the Penal Code prohibit forced labour (section 311), including abductions for that purpose (section 312).

The Committee noted 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 practices of abduction and the exaction of forced labour from children. The Committee observed that, while there have been positive and tangible steps to combat the forced labour of children, which include the conclusion of the Comprehensive Peace Agreement of 2005 and the results achieved by the CEAWC, there is no verifiable evidence that the forced labour of children has been abolished. Therefore, although the national legislation appears to prohibit abductions and the exaction of forced labour, this remains an issue of concern in practice. In this regard, the Committee reminded 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. The Committee expressed its deep concern over the situation of children under 18 years who continue to be abducted and subject to forced labour. *It once again urges the Government to redouble its efforts to improve the situation and to take the necessary measures to eradicate abductions and the exaction of forced labour from children under 18 years. It also requests the Government to provide information on the effective and time-bound measures taken to remove children from situations of abduction and forced labour and to provide for their rehabilitation and social integration.*

2. *Forced recruitment of children for use in armed conflict.* The Committee noted that, according to the Government's Periodic Report to the Committee on the Rights of the Child of 6 December 2001 (CRC/C/65/Add.17, paragraph 39), 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. 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

Popular Defence Forces established as a paramilitary force by the Popular Defence Forces Act of 1989, are allowed to recruit 16-year-olds.

The Committee noted that, according to the information available at the Office, the government armed forces, including the paramilitary Popular Defence Forces (PDF), the government-backed militias, the 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. In some cases, they were made to attack their own or neighbouring communities. The Committee also noted that in April 2003, the United Nations High Commissioner for Human Rights expressed concern at the continued recruitment and use of children in Sudan, in violation of international law. The Committee also noted that the Committee on the Rights of the Child, in its Concluding Observations of 9 October 2002 (CRC/C/15/Add.190, 2002, paragraphs 59 and 60) expressed deep concern that children are used as soldiers by the Government and opposition forces, and recommended the State party to end all recruitment and use of children as soldiers, in accordance with applicable international standards, complete demobilization and rehabilitate those children who are currently working as soldiers, and to comply with the Commission on Human Rights resolution 2001.

The Committee noted the Government's information that section 9(24) of the Sixth Protocol of the Comprehensive Peace Agreement 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. If such a violation occurs, the joint military committee shall decide on the appropriate disciplinary measures to be taken which include: "declaring or announcing the parties which are involved in the conflict, exposing or denouncing the culprit, or deciding on imposing a harsh penalty if the culprit is involved in serious violations, recommending that the individual culprit or parties involved be referred to a tribunal be it civil, criminal or military, as the case may be". The Committee also noted the Government's information that a Committee was set up after the Peace Agreement which is specialized in disarmament, demobilization and reintegration. It formulated a draft policy framework for the demobilization and reintegration of children linked to the armed forces groups.

The Committee noted the adoption of the Comprehensive Peace Agreement in January 2005. However, it considers that the prohibition of forcibly recruiting children should not be confined to the scope of the said Agreement. Hence, the Committee observed that, according to the legislation in force, children under 18 years may be recruited as "reserve forces" as well as members of the Popular Defence Force (from 16 years of age). ***The Committee therefore once again requests the Government to take the necessary measures, as a matter of urgency, to prohibit in the national legislation the compulsory recruitment of children under 18 years including as "reserves", in any military force, governmental or not, and to adopt appropriate penalties for contraventions of the prohibition. It also requests the Government to provide information on the time-bound measures taken to demobilize all child soldiers, including information on the number of children under 18 years who have been rehabilitated and reintegrated in their communities.***

*Article 7. 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 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 the peace among the tribes concerned.

The Committee 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 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 noted that the Committee on the Rights of the Child, in its Concluding Observations of 9 October 2002 (CRC/C/15/Add.190, paragraph 62) recommended the State party to prosecute those persons engaged in the abduction, sale and purchase or illegal forced recruitment of children. The Committee 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 reminded the Government that, by virtue of *Article 7, paragraph 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 that those engaged in the abduction and exaction of forced labour from children under 18 years are prosecuted and that sufficiently effective and dissuasive penalties are imposed on them. It also requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.***

The Committee is also addressing a direct request to the Government concerning other points.

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

## Switzerland

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the information provided by the Government in its report. In particular, it notes that the Government ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 19 September 2006, and that it has taken measures to raise awareness and for the

general prevention of violence and sexual abuse against children. ***It requests the Government to provide information on the following point.***

*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. According to the Federal Council, in so far as persons of between 16 and 18 years of age are *not used or procured for prostitution*, such conduct does not fall within the scope of Convention No. 182. The Committee further 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. In this respect, it noted that, in its report and Message of 20 September 1999, the Federal Council specifies that to *induce* to engage in prostitution means to initiate and cause a person to engage in prostitution. According to the Federal Council, the terms *use* and *procuring* for prostitution within the meaning of Convention No. 182 are covered by the terms *induce into prostitution* used in national law. They all have the connotation of constraint.

In view of the above, the Committee considers 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 notes that Swiss penal law is not fully in conformity with the Convention in relation to the *use* of a child under 18 years of age for prostitution 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 emphasizes that it is necessary to make a distinction between the age of sexual consent and freedom to engage in prostitution. Indeed, the freedom of sexual activity accorded to a young person by the law does not 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. The Committee further observes that there are two issues that need to be considered in response to the arguments advanced by the Government. The first is whether a young person's participation in a worst form of child labour (in this case the participation in prostitution) with that person's consent constitutes conduct that falls outside the scope of the Convention. The second is the meaning of *use of a child for prostitution*.

With regard to the consent of a young person between the ages of 16 and 18 years, the Committee refers to the preparatory work for Convention No. 182 (ILC, 86th Session, 1998, Report VI(2), pages 52–53). In reply to comments made by certain countries concerning the problems that might arise if prostitution is legal below the age of 18 years or the age of sexual consent is less than 18 years, 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 refers to the Message of the Federal Council of 11 March 2005 in which the Federal Council itself records 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 page 2656 of the Message). The Committee therefore considers 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*, as it is not defined by *Article 3(b)* of Convention No. 182, reference may be made to the relevant international instruments (ILC, 86th Session, 1998, Report VI(2), page 52). In this respect, the Committee refers 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 considers 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.

In the light of the above, 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 Committee considers that the age of consent does not affect the obligations to prohibit this worst form of child labour. It also considers that the act of engaging in a sexual activity with a child under 18 years for reward constitutes “use” of a child for prostitution whether or not the child consents. Accordingly, section 195 of the Penal Code does not fully give effect to the prohibition contemplated in *Article 3(b)* of the Convention. ***Consequently, since under Article 3(b) of the Convention the use of a child under 18 years of age for prostitution is considered to be one of the worst forms of child labour and, under the terms of Article 1 this worst form of child labour shall be prohibited as a matter of urgency, the Committee urges the Government to take the necessary measures to also prohibit and criminalize the use of a child aged between 16 and 18 years for prostitution, thereby specifying that the sexual freedom granted to children as from 16 years of age by the penal legislation does not include the freedom to prostitute themselves.***

The Committee is also addressing a request directly to the Government concerning other points.

## Tajikistan

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1993)**

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

The Committee recalled that the minimum age of 16 years for admission to employment or work was specified under *Article 2, paragraph 1, of the Convention* as regards Tajikistan. It noted, however, that section 174 of the new Labour Code (Act of 15 May 1997) only prohibits the employment of persons under the age of 15 in contrast to the previous Code which fixed the minimum age of 16 years. The Committee recalled that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise the minimum age as provided by *Articles 1 and 2(2)*. It also recalled that *Article 7* of the Convention allows, as an exception, the employment or work of persons 13 to 15 years of age on only light work which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school. Other than such light work, work done by children under 16 years of age, must be prohibited. **Therefore, the Committee again asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under Article 2 of the Convention, to ensure that access to employment of children of 15 years of age may be allowed, exceptionally, only for work meeting the criteria set out in 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.**

## Thailand

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's report. **It requests the Government to supply further information on the following points.**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* Following its previous comments, the Committee notes with satisfaction 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 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. 1. The police and public officials.* The Committee notes 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 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.**

*2. 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 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. 1. The ILO/IPEC TICW project and the National Plan on Prevention and Resolution of Domestic and Cross-border Trafficking in Children and Women (NPA on Trafficking in Children and Women 2003–07).* The Committee 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 notes 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 notes 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 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.***

2. *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.* 1. *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 notes 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 notes 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 considers 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 welcomes 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 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.***

2. *Measures aimed at securing compensation for victims of trafficking.* The Committee notes 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 notes 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 notes 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 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, pursuant to its adoption.***

*Article 7, paragraph 2. 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 notes 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 notes 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. 1. TICSA project.* The Committee notes that, according to the TICSA, Phase II, progress report of 2006, TICSA-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.

*2. Measures adopted by the Ministry of Social Development and Human Security (MSDHS).* The Committee notes 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";
- (f) development of return and reintegration programmes with Cambodia, Lao People's Democratic Republic, Myanmar, and Yunnan Province in China.

The Committee notes 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 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. 1. 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.*

*2. Migrant workers.* The Committee notes 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 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. 1. Regional cooperation.* Following its previous comments, the Committee notes 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; (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 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.*

*2. 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 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.*

*3. Poverty alleviation.* Following its previous comments, the Committee notes the Government's information that, according to the report of the Office of the National Economic and Social Development Board (NESDB), proactive and 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 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 also addressing a direct request to the Government concerning certain other points.

## Uganda

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's first report. It also notes the detailed discussion which took place at the Conference Committee on the Application of Standards of the 95th Session of the International Labour Conference in June 2006. Referring to the comments made by the Committee under the Forced Labour Convention, 1930 (No. 29), in so far as *Article 3(a) of the Convention* provides that the worst forms of child labour include "all forms of slavery or practices similar to slavery, such as forced or compulsory labour", the Committee is of the view that the issue of forced labour of children can be examined more specifically under this Convention. ***The Committee requests the Government to supply further information on the following points.***

*Article 3. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Abductions and the exaction of forced labour.* 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 killings, beatings and rape of these children. Over 14,000 children had been abducted from districts in northern Uganda.

The Committee notes the Government's information during the Conference Committee discussion that it was making efforts to address the problem of children's abductions. In this regard, legislative, awareness-raising and rehabilitative measures had been adopted in order to combat the abductions of children. Moreover, the Governments of Uganda and Sudan signed an agreement in Nairobi in December 1999 for the return of children abducted from Uganda and taken to Sudan by the LRA. As a result of these efforts, no serious cases of abductions were reported in the last six months and internally displaced persons had started returning to their homes.

The Committee notes that article 25:1 of the Constitution of Uganda stipulates that no person shall be held in slavery or servitude. It notes 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). It also notes that article 25:2 of the Constitution states that no person shall be required to perform forced labour. 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.

The Committee notes that, according to the report of the United Nations Secretary-General on children and armed conflict in Uganda of 7 May 2007 (S/2007/260, paragraph 10) (the Secretary-General's report of 2007), the latest figures from 2005 suggest 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. Children have been used as porters, informants, and other service providers, including sexual slaves. However, the total number of abductions has 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 have been no confirmed reports on the abduction of children in Uganda by the LRA. However, the LRA is not currently active within the territory of Uganda. In fact, the peace talks between the Government of Uganda and the LRA officially opened on 14 July 2006 and the parties 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 has not released children from its ranks.

The Committee expresses its deep concern at the situation of children abducted by the LRA and forced to provide work and services as informants, porters, hostages, and victims of sexual exploitation and violence. It observes that, while there have been positive and tangible steps, which include various peace agreements, to combat the abductions and the exaction of forced labour from children, there is no evidence that the forced labour of children has been eliminated, as children have not been released from the LRA. Therefore, although the national legislation appears to prohibit abductions and the exaction of forced labour, this remains a serious issue of concern in practice. In this regard, the Committee 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 elimination of the worst forms of child labour as a matter of urgency. ***It urges the Government to redouble its efforts to improve the situation and to take the necessary measures, as a matter of urgency, to ensure that the practice of abductions and the exaction of forced labour from children under 18 years is eradicated. It also 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. It finally requests the Government to provide information on the time-bound measures taken to remove children from situations of abduction and forced labour and provide for their rehabilitation and social integration.***

2. *Compulsory recruitment of children for use in armed conflict.* The Committee had previously noted, under Convention No. 29, that children abducted by the LRA were forced to become part of the conflict and used, among others, as soldiers.

The Committee notes that, according to the Secretary-General's report of 2007 (paragraph 5), Uganda is among the countries where parties to armed conflicts – the Uganda People Defence Force (UPDF), the local defence units and the armed group, the LRA – recruited or used children and were responsible for other grave violations. According to this report, it is estimated that, notwithstanding various peace agreements, up to 2,000 women and children may still be held by the LRA within its ranks and have not been released. Regarding children recruited by the national military forces, the Secretary-General's report indicates that the UPDF recruits young boys to serve in its armed forces, especially within the local defence units, which are UPDF auxiliary forces (defence units are not specifically regulated by law, they are de facto under the responsibility of the regular armed forces in Uganda and receive training and arms from the UPDF). According to the report, there are no signs of release of the 1,128 children reported to have been mobilized into local units in late 2004.

During recruitment, age verification is rarely carried out during enrolment. After training, many of these children are 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 leads to children continuing to join some elements of the armed forces. According to the report, in order to address the issue of children recruited in armed conflict, the Government has 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, also during the recruitment process, with the purpose of age verification. Furthermore, the Uganda Task Force on Monitoring and Reporting (UTF) has 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 finally notes that, in his recommendations, the Secretary-General: (a) called upon all parties to the conflict to maintain a dialogue with the UTF for the preparation and development of a concrete time-bound action plan; (b) expressed his concern at the absence of any sign of release of children associated with various forces, especially the local defence units and the LRA, and urged appropriate measures for their immediate release, disarmament, demobilization and reintegration; and (c) urged the LRA leaders to end child recruitment and release children associated with their forces (Secretary-General's report of 2007, paragraphs 63–65).

While noting the positive measures taken by the Government in this field, including the cooperation between the UPDF and the UTF, the Committee expresses its concern at the situation of children who continue to be recruited for armed conflict by the UPDF, the local defence units and the LRA. ***The Committee requests 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 is both prohibited and eliminated in the national armed forces and in rebel groups. In line with the recommendations of the UN Secretary-General on children and armed conflict, the Committee also urges the Government to pursue its efforts to ensure that children under 18 years are released from the ranks of the UPDF, local defence units and the LRA. It finally 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 notes the Government's information that the Orphans and Vulnerable Children (OVC) 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 also notes the information contained in the Government's written replies to the Committee on the Rights of the Child (13 September 2005; CRC/C/RESP/96, page 23), according to which one of the local NGOs, Gulu Support Children Organization (GUSCO), offers children affected by armed conflict a reception centre where they receive rehabilitation services, such as counseling, food, clothing, shelter, education and psychological support. More than 2,000 children have been reunited with their families since 2002. Other rehabilitative centres are the Rachalle Rehabilitation Centre in Lira District – managing a programme of more than 500,000 children within the affected area – and the Aachan Children's Centre (1,060 children rehabilitated since 2003). The Committee further notes that, according to the Government's information during the Conference Committee discussion, a number of measures have 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; (c) the project implemented by Save the Children from Denmark and Sweden, in collaboration with the UPDF and 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 requests the Government to continue providing information on the effective and time-bound measures taken 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.***

The Committee is also addressing a direct request to the Government concerning other points.

## Ukraine

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1979)**

The Committee takes note of the Government's reports. *It requests the Government to supply further information on the following points.*

*Article 2, paragraph 1, of the Convention. Scope of application.* The Committee had previously noted that, according to the communication of 23 August 2002 from the Federation of Trade Unions of Ukraine (FTUU), child labour was an increasingly frequent problem and that there were child workers under the age of 15 in Ukraine. It had also noted the FTUU's more recent allegation that, in practice, the average age of children affected by child labour in Ukraine amounted to 12 years and that child labour was widely used in illegally operated mines. Cheap child labour was also used in construction and agriculture. The Committee had noted the Government's indication during the Conference Committee on the Application of Standards in June 2004, that a technical cooperation programme with ILO/IPEC had been launched focusing, inter alia, on building the institutional and technical capacity of the Government and the social partners to apply Convention No. 138, as well as the Worst Forms of Child Labour Convention, 1999 (No. 182). It had further noted that section 3(1) of the Labour Code excludes self-employment from its scope of application. Taking into account the information from the FTUU on the number and age of children performing work in illegal mines and in the informal sector, the Committee had urged the Government to provide information on the manner in which the protection established by the Convention was ensured for children working in the informal sector, as well as on the implementation of the technical cooperation programme with ILO/IPEC and on its impact on eliminating child labour in the informal sector.

With regard to the impact of the ILO/IPEC programme on eliminating child labour, the Committee notes with interest that, according to the ILO/IPEC final technical progress report of the National Programme for the Prevention and Elimination of the Worst Forms of Child Labour in Ukraine of 8 December 2006 (page 58), 354 children have been prevented and 1,167 withdrawn from child labour, including its worst forms, through the provision of educational services and training opportunities. Moreover, 1,155 children have been prevented from child labour, including its worst forms, through the provision of other non-education related-services.

Moreover, the Committee notes 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. The Committee observes that since 2005 the Goznadzortrud (authority within the Ministry of Social Labour and Social Policy which monitors the compliance of labour legislation) has 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 Donetsk and Kherson regions where the identification of working children is under way, both in the formal and informal sectors. The Committee notes 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, notes the Government's statement that at present, the supervision of the use of child labour in the informal sector of the economy remains 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 Donetsk and Kherson regions are carrying out their activities to develop such a mechanism with the participation of the representatives of other supervisory bodies. *The Committee hopes 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.*

*Part V of the report form. Practical application of the Convention.* The Committee 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 and in illegal mines. It notes the Government's information that, between August and December 2005, the

labour inspectorate identified 290 persons under 15 years of age working. Violations of the legislation on child labour, mainly involving minors in night and overtime work were discovered in 640 enterprises.

Moreover, 37 minors were identified who worked in hard and harmful conditions. As a result of the inspections, 459 cases were taken to court. The Committee further notes the Government's information that, during inspections carried out in the period 2005–06 by the Goznadzortrud violations of the legislation were identified with respect to 339 minors, mainly concerning overtime or night work. On the basis of the results of inspections, 995 orders were issued in order to eliminate the violations. In addition, 68 employers have been subjected to administrative penalties. The documents relating to 143 inspections were transmitted to the Prosecutor's Office in order to take to court employers violating labour legislation related to minors. During the course of a survey carried out by labour inspectors in the Donetsk region, children working in the so-called illegal mines were not identified because of the lack of information about the location of these mines. However, within the framework of the ILO/IPEC programme, since 2006, a set of measures have 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 is envisaged to identify such children with the participation of the members of the Trade Union of Free Miners of Ukraine. The Committee notes 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 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 constitutes a problem. *The Committee 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 take the necessary measures to improve the system of collecting statistical data on children working in the informal sector and in illegal mines, and to provide information on any progress in this regard. 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.*

The Committee is also addressing a direct request to the Government concerning other points.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the Government's report. *It requests the Government to supply further information on the following points.*

*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 further 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, use in armed conflict and labour exploitation. Subsection (2) provides for a higher penalty when this offence is committed against a minor.

The Committee notes with interest the Government's information on the comprehensive measures adopted at various levels to prevent and combat child trafficking. These include:

- (a) the adoption in 2006 of amendments to the Criminal Code designed to increase the penalties imposed on persons committing the offences of human trafficking and involvement of children in prostitution (penalties increased to imprisonment for 5–12 years if victims are aged between 15 and 18 and to imprisonment for 8–15 years if victims are aged between 0–14 years);
- (b) the approval by the Cabinet of Ministers on 7 March 2007 of a Programme for Fighting Human Trafficking (2007–10) and consequent preparation by the Ministry of Internal Affairs (MIA) of a Plan of Action to implement the Programme, which contains measures to prevent child trafficking;
- (c) the adoption in June 2007 of the Law on the "State Programme/National Action Plan to Implement the Convention on the Rights of the Child until 2016" (the issues of child labour and child trafficking were mainstreamed into the National Action Plan);
- (d) elaboration by the Ministry of Family, Youth and Sport, in cooperation with the Ministry of Labour and Social Policy and the MIA of a draft National Programme containing sections regarding the prevention of illegal labour migration and forced labour and measures to protect child victims of trafficking;
- (e) measures taken at the educational level to prevent trafficking by involving teachers and parents of child students;

- (f) social inspections carried out to verify compliance with the requirements of legislation on protection of children's rights;
- (g) awareness-raising events on prevention of child trafficking and commercial sexual exploitation organized among the security services and other enforcement bodies; and
- (h) rehabilitative services provided to child victims of trafficking or vulnerable to trafficking in five rehabilitation centres for victims of trafficking and 60 centres for child social protection.

The Committee also notes with interest that the Government has taken a number of measures to ensure that the legislation on trafficking is enforced and persons who traffic in children for labour or sexual exploitation are, in practice, prosecuted. These include:

- (a) establishment within the MIA of a Department to Combat Offences related to Trafficking in Persons;
- (b) inspections conducted by the MIA in 2006 among a number of agencies offering placements abroad (24 cases of fraud related to placement abroad, some of which related to the trafficking of women and minors to the UAE);
- (c) arrest by the police of a number of organized criminal groups involved in trafficking (one case regarded the transfer to Turkey of three minors in order to sell them to a pimp; another case concerned the sale of 25 minor girls for their sexual exploitation in Moscow); and
- (d) increased supervision by the state border patrol service on the illegal removal of minors from Ukraine without parental consent (3,200 cases in 2005).

The Committee notes the Government's information that the Department to Combat Offences related to Trafficking in Persons has increased the efficiency of its work since 2005. In 2005, 415 criminal cases were investigated under section 149 of the Penal Code (prohibiting trafficking), of which 357 were taken to court (23 cases concerned children). This represents 54.3 per cent more than in 2004. In 2006, 376 cases were investigated under section 149 of the Penal Code, of which 317 were taken to court (38 cases concerned children). Moreover, in 2005, through the activity of the Department to Combat Offences related to Trafficking in Persons, 446 victims of trafficking, including 39 minors, have been identified and returned to Ukraine. In 2006, 393 victims, including 52 minors, were identified and returned to Ukraine.

However, the Committee notes 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.

One characteristic of child trafficking in Ukraine is that in most cases children are trafficked within the country. They are expected 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 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 welcomes the comprehensive measures taken by the Government to prevent and combat the trafficking of children under 18 years, as well as to prosecute child trafficking offenders. It observes, however, that, despite these measures and although the trafficking of children under 18 years is prohibited by law, it remains a serious issue of concern in practice. ***The Committee requests the Government to redouble its efforts to combat and eliminate the trafficking of children under 18 years for labour and sexual exploitation. It further requests the Government to pursue its efforts to ensure that persons who traffic in children for labour and sexual exploitation are in practice prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

*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 that, according to the Federation of Trade Unions of Ukraine's (FTUU) allegations, children in Ukraine were involved in prostitution, pornographic activities and the sex industry. This not only concerned young people of 15 years of age, but also children of 10 years of age. The Committee 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 notes with interest that the Government has taken a number of measures to combat the use, procuring or offering of children under the age of 18 for prostitution and pornography. In particular, the police and the MIA units collaborated 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. Examples of cases of arrests by the police of groups involved in child pornography include:

- (a) the case of a modelling agency producing pornographic material of children in Kiev and Kharlov and disseminating such material over the Internet;
- (b) the case of a person living in the Poltava region who forced children to take part in the production of pornographic material for distribution and sale; and
- (c) the case of an organized criminal group selling pornographic material involving minors in the Donetsk region.

The Committee notes the Government's information that, in total, in 2005, 282 cases regarding the offence of procuring prostitution (section 303 of the Penal Code), were taken to court, of which ten involved children. In 2006, 2,248 of such cases were taken to court, of which nine involved children. Moreover, the MIA units referred to the court 1,343 criminal cases related to section 301 (pornography). In 2005, 318 cases regarding the offence of pornography were taken to court, of which seven concerned children. In 2006, cases of pornography numbered 449, of which only three concerned children. ***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. 1. ILO/IPEC programme on child trafficking – PROTECT CEE.* Following its previous comments, the Committee notes that the ILO/IPEC programme launched in 2002 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) ended on 31 January 2007. Under Phase II of PROTECT CEE, two regions (Hersonskaya and Donetskaya oblasts) decided to carry out pilot projects in 2005–06 aimed at creating and testing mechanisms to monitor the worst forms of child labour, including the sale and trafficking in children. PROTECT CEE targeted child victims of trafficking and children vulnerable to trafficking. The Committee notes with interest the comprehensive information contained in the Government's report regarding the implementation of the PROTECT CEE and the results achieved. According to the Final Report of PROTECT CEE of 12 March 2007, various action programmes have been implemented in Donetsk and Kherson regions.

The action programme "Capacity Building for the Improvement of Care of Victims of Trafficking and Direct Support to their Long-Term Reintegration" had the following main outcomes: (a) 37 psychologists and social workers were trained on psychosocial rehabilitation of child victims of trafficking (and a draft manual was prepared for social workers in charge of providing rehabilitative services to child victims of trafficking); and (b) 20 children at high risk were prevented from entering trafficking and 69 child victims of trafficking were withdrawn. Under the action programme "Support to existing Community-based Youth Centres in the pilot regions of Donetsk and Kherson to reduce vulnerability to trafficking, identify potential victims, and facilitate social inclusion of returnees": (a) 52 peer educators were trained on provision of life skills; and (b) 722 children at risk were prevented from entering trafficking, and 57 child victims of trafficking were withdrawn. Finally, under the action programme "Promotion of youth employment in two pilot oblasts": (a) 50 career/job counsellors from the Public Employment Service (PES), school psychologists and social workers from Donetsk and Kherson regions were trained on job counselling; (b) 420 children at risk were prevented from entering trafficking and 70 child victims of trafficking were withdrawn through the provision of educational activities, vocational training, counselling, career guidance, uniforms, stipends and job placement; and (c) 82 family members were provided with counselling sessions on education/vocational training and career guidance/job counselling. ***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.***

*2. 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 notes the Government's information that ECPAT, and the NGO "La Strada-Ukraine" are 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. ***The Committee 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 with regard to combating the commercial sexual exploitation of children.***

*Article 8. International cooperation and assistance. 1. 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 notes 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. As a result of the cooperation with these countries, the following results have been obtained:

- (a) between 2005 and 2006, 96 instances of Ukrainian women being trafficked to Turkey were identified, 71 Ukrainian women who were in a situation of sexual slavery in Turkey were returned to Ukraine, and six organized groups involved in trafficking of Ukrainian women to Turkey were dismantled;
- (b) in September 2005, as a result of joint action with Scotland Yard, the Ukrainian police arrested the members of a group with international connections involved in the sale and trafficking of young Ukrainian women for sexual exploitation in the United Kingdom;
- (c) in 2005, a network which sold and trafficked women to Bulgaria and Greece was dismantled and offenders prosecuted; and
- (d) a regional cooperation project to dismantle the international human trafficking networks with the law enforcement agencies of the Czech Republic was approved.

The Committee notes with interest the Government's information that, taking into account the transnational nature of trafficking and the commercial sexual exploitation of children, Ukraine has established cooperation with Interpol, Europol, the Regional Centre of the South-East Cooperation Initiative for Cooperation against Transnational Crime (SECI), as well as international organizations and law enforcement agencies of other countries. ***The Committee 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.***

*2. Commercial sexual exploitation of children.* The Committee notes with interest that Ukraine cooperated at the international level to prevent and combat child pornography. Measures taken in this regard include:

- (a) bilateral cooperation with the United States to study advanced methods of documenting criminal activities related to the production and dissemination of child pornography through the Internet;
- (b) obtaining access to the Interpol database containing photos of child victims of commercial sexual exploitation, and to the International Registration Centre database containing data on missing children subject to exploitation; and
- (c) collecting a database, in cooperation with Interpol on 400 persons convicted in foreign countries for sex crimes committed against minors.

As a result of information exchange with the police of other countries, it was possible to conduct various cases regarding child pornography production and distribution, and prosecute the offenders.

The Committee is also addressing a request directly to the Government concerning other points.

## United Arab Emirates

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 1998)***

The Committee notes the Government's report.

*Article 9, paragraph 1. Penalties.* In its previous comments, the Committee had noted with satisfaction that Federal Act No. 15 prohibiting the employment of children under 18 years in camel jockeying, specifies that persons who violate these provisions are liable to a maximum of three years' imprisonment and/or a minimum fine of 50,000 dirhams. It had further noted the Government's information that five cases were referred to the courts of the United Arab Emirates (UAE) concerning persons using children for camel jockeying, for which investigations were pending. The Committee takes note of the information provided by the Government with regard to some examples of cases decided by the courts of the UAE. In two cases, penalties were imposed on persons who – due to negligence in adopting the necessary safety measures – were responsible for causing injuries to child camel jockeys. In particular, in one case (No. 9112/2002 Abu Dhabi), the accused was sentenced to three months' imprisonment and to a fine for financial compensation, for having caused – due to negligence in adopting the necessary safety measures – the death of a child camel jockey. In another case (No. 701/2003), the accused was sentenced to one month's imprisonment and to a fine for financial compensation, for having caused – due to negligence in adopting the necessary safety measures – injury to a child camel jockey.

The Committee proposes to continue to examine more specifically the application in practice of Federal Act No. 15 of 2005 prohibiting the employment of children under 18 years in camel jockeying under the Worst Forms of Child Labour Convention, 1999 (No. 182).

The Committee is also addressing a direct request to the Government concerning other points.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's report and the communication of the International Trade Union Confederation (ITUC) dated 31 August 2006. *It requests the Government to supply further information on the following points.*

*Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (d). Slavery and practices similar to slavery.* 1. *Sale and trafficking of children for their use in camel jockeying.* In its previous comments, the Committee had observed the ITUC's allegations that, according to the statement made by the Minister for Overseas Pakistanis in November 2004, some 2,000 children from Pakistan, India, Bangladesh and Mauritania were taken to the United Arab Emirates (UAE) to work as camel jockeys. Moreover, in 2005, children as young as 5 years of age continued to be trafficked from Bangladesh, Pakistan, Sudan and Yemen to be used as camel jockeys in the UAE. The Committee had noted with interest the adoption of Federal Law No. 15 of 2005, which prohibits the trafficking of children under 18 for camel racing. It had finally noted that, on 8 May 2005, the UAE signed an agreement with UNICEF in order to rehabilitate and protect child jockeys who were repatriated to their country of origin.

The Committee notes the ITUC's allegations of 31 August 2006 that, notwithstanding the Government's indication that camel owners from October 2005 were starting to use robots to replace child camel jockeys, credible sources indicate that races with child jockeys are still taking place in smaller camp-based venues.

The Committee notes with interest the Government's information 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 and includes penalties entailing a penalty of life imprisonment if the victim is a boy or a girl under 18 years of age. It also notes with interest that the Government has taken a number of measures to prevent and eliminate the trafficking and the use of children for camel jockeying. In particular, according to the Government, camel jockeying became automated from October 2005, which raised the interest of camel race owners in using robot jockeys rather than child camel jockeys. The Committee finally notes that, according to recent information from UNICEF, in April 2007, UNICEF and the UAE, together with delegates from Pakistan, Bangladesh, Mauritania, and Sudan met to affirm their historic commitment to ending the use of children as camel jockeys and providing services and compensation to all children formerly involved in camel racing in the UAE. Acknowledging that an international solution is the only effective way to protect former camel jockeys, the Governments of Bangladesh, Mauritania, Pakistan and Sudan commended an agreement signed by the UAE and UNICEF to establish a second and expanded phase of their programme to rehabilitate and repatriate child camel jockeys to their country of origin. That agreement, dated 23 April 2007, was signed in Abu Dhabi and extends the UAE–UNICEF programme, which started in May 2005, to May 2009.

The Committee welcomes the comprehensive measures adopted by the Government to prevent and eliminate the trafficking of children under 18 years for camel jockeying and, more generally, the use of children for camel jockeying. *It encourages the Government to pursue its efforts to ensure that children under 18 years of age are not trafficked in future for the purpose of camel jockeying, in accordance with the provisions of Federal Law No. 15 of 2005, Federal Act No. 51 of 2006, and the international obligations under the UAE–UNICEF agreement. The Committee also requests the Government to provide a copy of Federal Act No. 51 of 2006 with its next report.*

2. *Sale and trafficking of children for commercial sexual exploitation.* In its previous comments, the Committee had noted the ITUC's allegations of 2003 that, according to a report of the International Organization for Migration, girls from Azerbaijan, the Russian Federation and Georgia, as well as other countries, had been trafficked to the UAE for sexual exploitation. It had 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. The Committee notes the Government's information 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 notes 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), Ukrainian girls are trafficked to the UAE. They are exploited, inter alia, as waitresses, or for sexual services. The Committee also observes that, according to the information available at the Office, no progress was reported in the UAE in punishing trafficking crimes. *The Committee urges the Government to take the necessary measures to ensure that persons who traffic in children for commercial sexual exploitation are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. In this regard, it requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for trafficking children under 18 years of age for commercial sexual exploitation.*

*Article 5. Monitoring mechanisms.* 1. *The police.* The Committee had previously noted that inspections carried out by the police during camel racing had contributed to reducing the number of children trafficked to be used as camel jockeys. It had noted that Ministerial Decree No. 41 of 2005 established a Special Commission, composed of policemen, who are responsible, among others, for monitoring camel racing, especially the issue of child camel jockeys and responding effectively to any new problem faced in this regard. It notes that, according to the information available at the Office, government officials actively monitored camel races to ensure that children were not used as camel jockeys in violation of Federal Law No. 15 of 2005. *The Committee requests the Government to provide information on the measures taken by the Special Commission to ensure that child camel jockeys under 18 years do not take part in camel*

*racés, in accordance with Federal Law No. 15 of 2005. It also requests the Government to provide information on the findings of the Special Commission and the number of infringements reported.*

2. *National Committee to Combat Trafficking of Persons.* The Committee notes the Government's information that after the promulgation of Federal Law No. 15 of 2005, the Minister of Interior issued Order No. 376 of 2005 concerning the setting up of a National Committee to Combat Trafficking of Persons. This National Committee is presided by the Under-Secretary of the Ministry of Justice, and includes 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 National Committee has several tasks aimed at combating trafficking in persons. ***The Committee requests the Government to provide information on the measures taken by the National Committee to Combat Trafficking of Persons and their impact on eliminating the trafficking of children under 18 years for the purpose of labour exploitation, in particular for use in camel jockeying, as well as for sexual exploitation.***

*Article 7, paragraph 1. Penalties. Trafficking of children for their use in camel jockeying.* The Committee had previously noted that 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 owners of camel jockeys form part of the local elite and enjoy impunity. The Committee had 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.

The Committee notes the ITUC's more recent 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 is very disappointing and raises serious questions as to whether existing monitoring and enforcement mechanisms are adequate.

The Committee notes that, in the framework of the UAE-UNICEF programme to rehabilitate and repatriate trafficked former child camel jockeys, the Government held an amnesty for persons releasing under age jockeys by 31 May 2005. It also notes that the prosecutions against those trafficking in and employing children for camel jockeying concern the period from June 2002 to August 2004 (whereas from October 2005 the Government indicates that robots started being used as camel jockeys). Furthermore, it notes the Government's information under Convention No. 138 regarding 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. In particular, in one case (No. 9112/2002, Abu Dhabi), the accused was sentenced to three months' imprisonment and to a fine for financial compensation, for having caused – due to the negligence in adopting the necessary safety measures – the death of a child camel jockey. In another case (No. 701/2003), the accused was sentenced to one month's imprisonment and to a fine for financial compensation, for having caused – due to the negligence in adopting the necessary safety measures – injury to a child camel jockey. ***The Committee requests 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 and the conditions for amnesty stated within the UAE-UNICEF programme, are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice.***

*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. 1. Children trafficked for camel jockeying.* The Committee had previously noted that, in the framework of the UAE-UNICEF programme, sheltered housing was established to take care of child victims of trafficking before repatriating them to their country of origin. It had also noted that 86 children working as camel jockeys in 2002, and 21 children in early 2003, were repatriated to Pakistan. Moreover, between 13 February 2005 and 3 May 2005, 93 child victims of trafficking were repatriated to their country of origin.

The Committee notes the ITUC'S allegations that there is a major discrepancy between the Government's estimate of 3,000 camel jockeys in the UAE (estimate done on the occasion of the agreement signed with UNICEF) and the number of children repatriated. These figures indicate that many more children continue to work as camel jockeys and still need to be identified and repatriated.

The Committee notes that the UAE continues to rehabilitate and repatriate former child camel jockeys. In this regard, it notes the Government's information that it has earmarked US\$10 million to rehabilitate child camel jockeys and repatriate them to their countries of origin. The number of children benefiting from the programme carried out by the UAE-UNICEF programme, as of 27 March 2006, was 1,073, of which 571 were Pakistani children, 318 Bangladeshi, 159 Sudanese, 18 Mauritanian, and seven Eritrean. According to the Government, former child camel jockeys from Pakistan received financial compensation from the UAE authorities. The Committee notes that the UAE is continuing to cooperate with UNICEF and the Governments of Pakistan, Bangladesh, Mauritania and Sudan, in order to withdraw children trafficked to the UAE for use in camel jockeying, rehabilitate them, repatriate them to their countries and reintegrate them in their communities. In this regard, it notes the Government's information that, in 2007, it earmarked a further US\$30 million in order to provide additional care centres for former child camel jockeys and pay them financial compensation. The Committee also notes that, according to recent information from UNICEF, in the framework of the UAE-UNICEF programme, the UAE Ministry of Interior and government representatives from Sudan, Bangladesh, Mauritania and Pakistan 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. Each of the countries will establish an independent claims facility governed by an administrative board, with one member for each board appointed by the UAE Ministry of Interior, and two members for each board appointed respectively by the Ministry of Home Affairs of the Government of Bangladesh, the Government of the Islamic Republic of Pakistan, the Ministry of Interior of the Republic of Sudan, and the Government of the Islamic Republic of Mauritania. Each Board may designate one or more NGOs or similar entities like UNICEF or the Red Crescent Society, chosen for their expertise in working with children formerly involved in camel racing. These NGOs/entities will help publicise the claim facility and provide legal and other assistance to children who are considering or have filed claims. ***The Committee requests the Government to continue to provide information on the number of children under 18 years who have been withdrawn from trafficking for camel jockeying and repatriated through the UAE–UNICEF programme. It also requests the Government to provide information on the compensation given to former child camel jockeys through the Independent Claims Facility.***

2. *Child victims of trafficking for sexual exploitation.* The Committee previously noted the ITUC's indication that the authorities of the UAE make 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 had observed the Government's information that child prostitutes are sentenced to imprisonment and when they are foreigners, which is the case for most of them, they are repatriated to their country of origin. The Committee had encouraged the Government to ensure that children trafficked to the UAE for commercial sexual exploitation were treated as victims rather than offenders and had requested the Government to take measures to ensure the rehabilitation and social integration of child victims of trafficking for sexual exploitation. The Committee notes the Government's information that the Dubai charity organization was set up in order to ensure the welfare of women and children. This constitutes a qualitative leap forward in providing 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 requests the Government to indicate the number of child victims of trafficking for sexual exploitation who have been rehabilitated and socially integrated through the Dubai charity organizations or other centres.***

The Committee is also addressing a request directly to the Government concerning certain other points.

## United Kingdom

### Isle of Man

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

The Committee had previously observed the contradiction existing between the local by-laws, which regulate the hours in which young people over 13 years and under school leaving age may work, and the Education (Compulsory School Age) Act 1971 (Appointed Day) Order 1985, which raised both the compulsory schooling age and the minimum age for admission to employment to 16 years. It had requested the Government to indicate the legislative provisions currently in force to give effect to the provisions of the Convention.

The Committee notes the Government's information that both the local by-laws and the Education (Compulsory School Age) Act 1971 (Appointed Day) Order 1985 have now been revoked and replaced by the Employment of Children Regulations of 2005. The Committee notes with satisfaction that, according to Regulation 2 of the abovementioned Regulations, no child under 13 years is permitted to work at all and no child under 15 years is allowed to be employed in anything other than light work. In addition, children under 18 years of age are prohibited from undertaking the types of hazardous work listed in Regulation 2. Children who are still of compulsory school age (who have not attained 16 years of age) are prohibited from undertaking any kind of work harmful to their health or development or to their education. The Committee also notes the Government's information that young workers are no longer required to hold a juvenile employment card. Instead, all employers are required to maintain a register of children of compulsory school age (16 years) employed by them. This register will include information on the child's date of birth, the nature of the work undertaken by him/her, and his/her hours of work. Such register must be open to inspection by the Department of Education.

## United States

#### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 1999)***

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

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Slavery and practices similar to slavery. Sale and trafficking of children.* In its previous comments, the Committee had noted the AFL–CIO's allegation of 9 January 2004, corroborated by the report of the "Trafficking in Persons and Worker Exploitation Task Force" (hereinafter TPWETF), that the United States is thought to be the destination of 50,000 trafficked women and children each year. The AFL–CIO indicated that approximately 30,000 women and children are trafficked annually from South-East Asia, 10,000 from Latin America, 4,000 from

the former Soviet Union and Central and Eastern Europe, and 1,000 from other regions. The Committee had noted that the Trafficking Victims Protection Act of 2000 (TVPA) created new crimes and enhanced penalties for existing crimes including trafficking with respect to peonage, slavery, involuntary servitude, forced labour or sex trafficking of children. It had also noted that Title 18 USC, section 1590, introduced by the TVPA, states that whoever knowingly recruits, harbours, transports, provides or obtains by any means a person for labour or services commits an offence. Pursuant to the adoption of the TVPA, victims of trafficking benefit from assistance and are considered to be “victims of a severe form of trafficking in persons” (for sexual or labour exploitation, according to section 8 of the Act) when they are under 18 years of age (section 14).

The Committee noted with satisfaction the Government’s information that on 19 December 2003 Congress enacted the Trafficking Victims Protection Reauthorization Act (TVPRA), which reauthorized the 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 noted the Government’s statement that the statistics referred to by the AFL–CIO in 2004 were based on a compilation of 1997 data which are now outdated. Since that time, the Government has refined its data collection and methodology, and, as of May 2004, it estimates that 14,500–17,500 people are trafficked annually into the United States. This estimate covers men, women and children who are victims of severe forms of trafficking as defined in the TVPA. The most recent estimates show that the largest number of people trafficked into the United States come from East Asia and the Pacific (5,000–7,000). The next highest numbers come from Latin America and from Europe and Eurasia (between 3,500 and 5,500 victims). Most trafficked victims are employed in the sex sector, migrant farm work, domestic or household work, and low-wage industries such as the restaurant and hotel industries.

The Committee noted the Government’s statement that additional research and studies regarding trafficking in persons have been funded over the past five years. In addition, the Government has funded three multi-year projects related to trafficking into the United States which are pending. There are also pending TVPRA-mandated research projects regarding the economic causes and consequences of trafficking, the effectiveness of US efforts to prevent trafficking and assist its victims, and the interrelationship between trafficking in persons and global health risks. The Committee also noted the Government’s information that the Department of Justice (DOJ) has drafted a model anti-trafficking statute for states and is encouraging them to adopt their own laws. Pursuant to this initiative several states have passed comprehensive trafficking laws based on the model, while others have adopted their own statutes.

The Committee welcomed the recent comprehensive measures taken to combat trafficking in children for labour and sexual exploitation. It nevertheless noted that, although the law prohibits the trafficking of children for labour or sexual exploitation, it still remains an issue of concern in practice. ***The Committee accordingly once again encourages the Government to redouble its efforts to eliminate the trafficking of children under 18 years for labour and sexual exploitation and to provide information on progress made in this regard. The Committee also requests the Government to provide information on the pending projects on trafficking funded by the Government and their impact on eliminating the trafficking of children under 18 years for labour and sexual exploitation.***

*Articles 3(d) and 4(1). Hazardous work.* The Committee had previously noted the AFL–CIO’s indication 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 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 of family farms) that the Secretary of Labor finds and declares to be “particularly hazardous for the employment of children”. It had observed that, while *Article 4(1)* of the Convention allows the types of hazardous work to be determined by national laws or regulations or the competent authority after consultation with the social partners, section 213 of the FLSA authorizes children aged 16 and above to undertake, in the agricultural sector, occupations declared to be hazardous or detrimental to their health or well-being by the Secretary of Labor.

The Committee noted the AFL–CIO’s allegation of 6 June 2005 – referring to the Child Coalition Report of June 2005 – that, because of the statutory differential in minimum ages in agriculture, on the one hand, and all other industries, on the other hand, the Hazardous Orders regulations contain numerous anomalies, such as the fact that using a power-driven circular saw or band saw is allowed for children starting from 16 in agriculture, whereas in other industries the minimum age for using such saws is 18 years. According to the AFL–CIO and the National Institution 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 youth of 15 to 17 years of age working in agriculture appear to have over four times the risk for the injury of youth workers in other industries. However, eventual changes to Hazardous Orders (HOs) could be not 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 AFL–CIO points out that, according to the General Accounting Office (GAO) “Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and their Children” of 2000 (GAO’s report of 2000), over 75 per cent of pesticides are used in agriculture and children are much more vulnerable to harm from pesticides, both because they breathe more than adults per unit of body weight and because their bodies and internal organs are still developing.

The Committee noted the Government’s information that the FLSA, which was developed through a process open to the participation of employers’ and workers’ representatives, does not authorize the Secretary of Labor to restrict young persons of 16 years and older from working in agriculture. It noted the Government’s statement that the national law fulfils the requirements of *Articles 3(d) and 4(1)* of the Convention, which allow governments, in good faith and subject to certain procedural requirements, to establish standards that treat children of different ages differently, and that treat different classes of occupations differently. Moreover, in determining types of hazardous work, pursuant to *Articles 3(d) and 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 conditions that the health, safety and morals of the children are fully protected. Therefore, the Congress has determined that it is safe and appropriate for children at 16 to perform work in the agricultural sector, in conformity with *Articles 3(d) and 4(1)* of the Convention. The Committee noted the Government’s statement that it continues to seek ways to better protect the health and safety of children working in the agricultural industry. This includes: (i) programmes to protect farm workers and their children from pesticides, such as the Environmental Protection

Agency's (EPA) review of the Worker Protection Standard (WPS) launched in response to the GAO's report of 2000; (ii) programmes to educate young workers about safety and health in agriculture through the Department of Labor (DOL)'s Occupational Safety and Health Administration (OSHA); (iii) programmes to prevent injuries among children, through DOL's participation in the Federal Inter-agency Working Group on Preventing Childhood Agricultural Injuries chaired by the NIOSH. The Committee noted the Government's statement that some states (i.e. Florida and Oregon) have adopted more stringent agricultural standards than the federal Government and prohibit children under 18 years of age from performing some hazardous activities.

While taking note of this information, the Committee shared the concern of the Conference Committee with regard to the hazardous and dangerous conditions that are and could be encountered by children under 18, and indeed in some cases under 16, in the agricultural sector. It also expressed its concern at the high number of injuries and fatalities, including death, suffered by children under 18 years working in the agricultural sector. The Committee emphasized 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. ***The Committee accordingly once again encourages the Government to take the necessary measures to ensure that work performed in the agricultural sector is prohibited to children under 18 years where it is hazardous within the meaning of the Convention.***

*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 also noted that these Orders were established in 1939 and 1960 with regard to non-agricultural occupations and in 1970 for agricultural occupations. It had noted that the NIOSH recommended the development of several new HOs to protect children from particularly hazardous work not adequately addressed in the existing regulation. It had noted the Government's indication that it was in the final stages of rule-making on several HO recommendations by the NIOSH: those relating to driving and operating balers and compactors, roofing, and handling explosive materials. The Committee noted the AFL-CIO's allegation of June 2005 that the NIOSH in March 2002 issued recommendations for changing the existing agricultural HOs. It noted the Government's information that the HOs relating to driving and operating balers and compactors, roofing and handling explosives, were amended on 16 December 2004, along with revisions to the child labour regulations under the FLSA. In particular, HO 2 was amended to provide that minors under 17 years of age cannot drive automobiles and trucks on public roadways on the job and establishes limited conditions and criteria under which 17-year-olds may perform such activities. HO 12 was amended to establish criteria permitting 16 and 17 year-olds to load, but not unload, certain restricted waste material, baling and compacting equipment. ***The Committee once again requests the Government to continue providing information on the amendments to the existing HOs pursuant to the recommendations of the NIOSH, especially in the agricultural sector.***

*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. It had also noted that, according to the GAO's report of 1998 "Child labour in agriculture: Changes needed to better protect health and educational opportunities", the number of recorded inspections in agriculture by the DOL's Wages and Hour Division (WHD), the OSHA, the EPA and the states, has generally declined in recent years. Thus, it observed that the GAO recommended that steps be taken to ensure that the procedures specified in the existing agreement among the WHD and other federal and state agencies, especially with regard to joint inspections and exchange of information, are being followed.

The Committee noted the AFL-CIO's allegation of 3 October 2006 that, in 2005 the DOL's WHD conducted 1,784 child labour investigations, which represents a drastic 31.5 per cent decline from 2,606 child labour investigations conducted in 2004 and also represents the lowest number of child labour investigations in at least ten years. Moreover, despite all the hazards faced by children working in agriculture, the DOL conducts very few child labour investigations in agriculture. In 2005, only 25 of the 1,784 child labour investigations conducted (1.4 per cent) involved agricultural employers, which is less than one-fifth of the child labour investigations conducted in 1999.

The Committee noted the Government's information that, in 2004, the WHD concluded over 1,600 investigations in the agricultural industry and found 42 minors illegally employed in 26 cases. Four minors were found illegally employed in violation of the agricultural HOs. It noted the Government's information that the EPA revised the national WPS inspection guidance for conducting routine use inspections on agricultural establishments. Moreover, WHD, OSHA and NIOSH have partnered to reduce occupational deaths and injuries to youth on farms through compliance assistance and awareness. While taking note of this information, the Committee expresses its concern at the decreasing number of child labour investigations conducted in the agricultural sector in 2005. ***It once again encourages the Government to redouble its efforts to enforce child labour laws in agriculture, especially with regard to hazardous work. It requests the Government to provide information on the measures taken in this regard and their impact on the elimination of hazardous work in this sector.***

*Article 7, paragraph 1. Penalties.* The Committee had previously noted that the TVPA and the USC provide for sufficiently effective and dissuasive penalties for the offences of: trafficking for purposes of slavery or forced labour (Title 18 USC, section 1590); sex trafficking of children (Title 18 USC, section 1591(b)(2)); slavery (Title 18 USC, sections 1583 and 1584); forced labour (Title 18 USC, section 1589); using a child to import, export or produce controlled substances or for the commission of drug related offences (Title 21 USC, section 841(b) and 861(b)). The Committee had also noted that the Federal Sentencing Guidelines of 2000 provide for increased penalties for crimes involving minors under 18 years of age such as the exploitation of children for drug trafficking (section 2D1.2), for prostitution (section 2G1.1), for the production of pornography (sections 2G2.1. and 2G2.3) or to commit a crime (section 3B1.4). It had noted that the Secretary of Labor proposed to raise the maximum penalty from US\$11,000 to US\$50,000 for any kind of child labour violation which results in death or maiming. In addition, the Secretary of Labor proposed to raise the maximum penalty for wilful or repeated violations that lead to the death or serious injury of a child. The Committee noted the Government's information that the President's budget for the 2004-06 fiscal years included proposals to increase civil money penalties for violations of the FLSA's youth employment provisions that result in the death or serious injury of a young worker. The proposal was transmitted to Congress in 2005 but has not been enacted. ***The Committee once again requests the Government to provide information on any progress towards the enactment of this proposal.***

*Part V of the report form.* Following its previous comments, the Committee noted the Government's information that the TVPA, as amended by the TVPRA, requires that the Attorney-General submit an annual report to Congress assessing the impact of United States government activities to combat trafficking in persons which include, among others, information on: the number

of trafficking victims who received government benefits and services; the number of investigations and prosecutions of trafficking in persons. It also noted the Government's information that, in 2004, the DOJ filed 12 TVPA cases and obtained 245 convictions. In total, the DOJ filed 29 trafficking cases in 2004, which is more than double the cases filed in 2003. The majority of these cases involved offences against children. It noted the Government's information that under the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, there have been roughly 60 sex tourism investigations, 27 sex tourism indictments or complaints and 16 convictions. Regarding the programmes on child pornography launched by the Child Exploitation and Obscenity Sections (CEOS) and the FBI, the Committee noted the Government's information that 35 victims in Indiana, Montana, Texas, Colorado and Canada have been identified as a result of the FBI Endangered Child Alert Program (ECAP) which was launched in 2004 by the FBI's Innocent Images Unit with the goal of identifying subjects who are engaged in the sexual exploitation of children depicted in images of child pornography. Moreover, during 2004, the FBI's Criminal Investigative Division initiated 67 "Innocent Lost" investigations, which led to 118 arrests and 26 indictments. Since the inception in 2003 of the "Innocent lost" initiative to address child prostitution, 80 children have been recovered. *The Committee takes due note of this information and requests the Government to continue providing information on the worst forms of child labour through copies of or extracts from official documents, including inspection reports, studies and inquiries, and information on the nature, extent and trends of the worst forms of child labour, the number of children covered by the measures giving effect to the Convention, the number and nature of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.*

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

## Uruguay

### **Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79) (ratification: 1954)**

In its previous comments, the Committee noted the comments made by the Inter-Trade Union Assembly – Workers' National Convention (PIT–CNT), according to which the National Institute for Minors (INAME) had adopted resolutions authorizing the night work of young persons aged 16, in breach of the provisions of the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79). According to the PIT–CNT, resolution No. 2028/01 of the INAME National Directorate authorized the departmental offices in the interior of the country and the Inspection, Training and Labour Market Integration Division in Montevideo to issue temporary permits authorizing young persons aged 16 to work between 10 p.m. and 12 a.m., subject to the prior consent of the father, guardian or other person having responsibility for the young person. The work was not allowed to interfere with the young persons' education or to jeopardize their health or morals. The Committee asked the Government to take the necessary measures to ensure that the provisions of the Convention and national legislation prohibiting the night work of young persons between 10 p.m. and 12 a.m. were observed.

The Committee notes with satisfaction the Government's information that no permit authorizing night work up to 12 a.m. has been issued to young persons under 18 years of age since 2004.

## Bolivarian Republic of Venezuela

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1987)**

The Committee takes note of the Government's report. *It asks the Government to send information on the following points.*

*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 took note of a statement by the International Trade Union Confederation (ITUC) to the effect that child labour was widespread in the informal sector and in non-regulated activities in the country. According to certain estimates, some 1.2 million children were working, particularly in agriculture, the domestic service and as street vendors, and more than 300,000 were working in the informal economy. The Government stated in this connection that work in agriculture and itinerant sales were regulated by sections 112–113 of the Act of 1998 on the protection of children and young people, and that the National Institute for Prevention, Safety and Health at Work (INPSASEL), together with the inspection service of the Ministry of Labour, were carrying out inspections in the area of child labour both in the formal and in the informal sectors. The Committee requested the Government to provide information on measures taken or envisaged to ensure the effective abolition of child labour and the results of the inspection visits carried out by INPSASEL and the inspection service of the Ministry of Labour.

The Committee notes from information available at the Office that the Bolivarian Republic of Venezuela is cooperating with ILO/IPEC and has launched several projects for the elimination of child labour and the protection of young workers, in particular by strengthening the trade unions. It notes that a Pilot Action Plan for Street Children has been adopted and that social programmes to eliminate child labour have been implemented. The Committee further notes the information sent by the Government to the effect that it has launched a programme for the protection of boys, girls and young people (PRONAT), the aim of which is to set up a system for supervising the working conditions of boys, girls and young workers that will secure better protection of their health and their personal and social development. The programme targets children and young workers in the formal and the informal sector and, with a view to guaranteeing their rights in full, provides for the adoption of various policies and action plans. The Committee notes that, according to the

Government, the implementation of PRONAT has shown that there are boys, girls and young people who work in the streets or in the agricultural sector and that their activities increase during holiday periods. The Government nevertheless states that although the lack of official statistics makes it impossible to determine the exact number of children and young people who work, it doubts the accuracy of the ITUC's estimate of the number of working children.

The Committee appreciates the measures taken by the Government to combat child labour, but is concerned at the number of children and young people who work. ***It strongly encourages the Government to redouble its efforts gradually to remedy the situation. The Committee hopes that the Government will be in a position to provide statistics in its next report showing the extent of child labour, including, for instance, extracts from reports of the inspection services, information on the number and nature of offences reported. Lastly, it asks the Government to provide information on the implementation of the abovementioned projects and on the results obtained in terms of the gradual elimination of child labour.***

*Article 2, paragraph 3. Age of completion of compulsory schooling.* The Committee notes that according to UNESCO, 92 per cent of girls and 91 per cent of boys attend primary school whereas only 67 per cent of girls and 59 per cent of boys attend secondary school. It notes that, in its concluding observations on the Government's second periodic report in October 2007 (CRC/C/VEN/CO/2, paragraphs 66–67), the Committee on the Rights of the Child welcomed that children's education belongs to the top priorities of the Government's policies and that progress has been made particularly with regard to enrolment rates and school attendance by disadvantaged children. The abovementioned committee nevertheless expressed concern at the low secondary school enrolment rate of indigenous children, children of African descendance and children living in rural areas, and at the high school drop-out rate. Despite the Government's efforts, the Committee is likewise concerned at the low secondary school attendance rates. It points out that poverty is one of the main causes of child labour and that combined with a defective education system, it hinders their development. ***The Committee considers that compulsory education is one of the most effective means of combating child labour, and strongly urges the Government to step up efforts to improve the working of the education system, in particular by increasing the school enrolment rate and reducing the drop-out rate. It further asks the Government to step up efforts to combat child labour by reinforcing measures enabling children who work to be integrated into the school system, whether formal or informal, or into apprenticeship or vocational training as long as minimum age requirements are met.***

*Article 3, paragraphs 1 and 3. Age of admission to hazardous work and authorization to work from the age of 16.* The Committee noted previously that section 96(1) of the 1998 Act on the protection of children and young people prohibits the employment of young persons aged between 14 and 18 years in the types of work referred to by the Act. It nonetheless noted that under the terms of section 96, the national executive authority may, by decree, determine minimum ages that are higher than 14 years for types of work that are hazardous or harmful to the health of young persons. The Government indicated in this connection that INPSASEL was exploring whether it was necessary to adopt a decree determining minimum ages higher than 14 years, and that once the list of hazardous types of work was adopted, minimum ages would be recommended taking into account the overarching interests and the health of young people. The Committee reminded the Government that, under the Convention, the employment or work of young persons between 16 and 18 years of age may be authorized subject to strict protection and training requirements. It requested the Government to take the necessary steps to ensure that no one under 18 years of age may be authorized to carry out hazardous work, other than in the instances allowed by the Convention. The Committee takes note of the Government's information that in its research on hazardous work, INPSASEL will take account of the provisions of *Article 3, paragraphs 1 and 3*, of the Convention. ***It expresses the firm hope that in its next report the Government will be in a position to supply the results of INPSASEL's research and that the list of types of hazardous work will be established at the earliest possible date.***

*Article 3, paragraph 2. Determination of types of hazardous work.* With reference to its previous comments, the Committee notes the Government's information that INPSASEL has completed its study on the classification of types of work that are hazardous for children and young persons and that a multidisciplinary team will conduct further studies to determine, on a scientific basis and using test cases, what exactly is to be understood by hazardous work. ***The Committee expresses the firm hope that the list of types of hazardous work will be established at the earliest possible date and requests the Government to provide information on all progress made in this respect. The Government is also asked to send information on the consultations held with employers' and workers' organizations to determine these types of work.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)**

The Committee notes the Government's first report. With reference to its comments under the Forced Labour Convention, 1930 (No. 29), concerning the sale and trafficking of children and child prostitution, and as the Worst Forms of Child Labour Convention, 1999 (No. 182), addresses these worst forms of child labour, the Committee considers that they may be examined more specifically in the context of Convention No. 182. ***It requests the Government to provide information on the following points.***

*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 prostitution.* In its comments under Convention No. 29, the Committee noted the observations made by the International Trade Union Confederation (ITUC) in which it referred to the "widely

reported” trafficking of women and children for prostitution. It also noted the convergent information from United Nations institutions. In particular, it noted that in May 2001 the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations on the Government’s second periodic report, expressed serious concern at the spread of child prostitution and the trafficking of children and the incapacity of the State party to resolve these problems (E/C.12/1/Add.56, paragraph 16).

The Committee notes that the national legislation contains various provisions penalizing the sale and trafficking of children under 18 years of age or their use, procuring or offering for prostitution. With regard to sale and trafficking, it notes that section 266 of the Basic Act on the protection of children and young persons provides that any person who facilitates acts intended to cause a child or young person to journey beyond the frontiers without complying with the legal formalities with a view to profit, participates in such acts or benefits therefrom, shall be liable to a sentence of imprisonment of between two and six years. Furthermore, section 231 of the Act provides that the unlawful transport of the child or the young person, within or outside the country, shall be punished by a fine according to the gravity of the offence. Under the terms of section 16(11) of the Basic Act to combat organized crime, the trafficking of persons, including migrants, constitutes an offence of organized delinquency. With regard to the use, procuring or offering of a child or young person for prostitution, the Committee notes that section 258 of the Basic Act on the protection of children and young persons provides that any person who incites a child or young person to engage in sexual activity, organizes such activity or draws earnings therefrom shall be convicted to a sentence of imprisonment of from three to six years. It further notes that the Penal Code contains provisions, especially in sections 288, 289 and 290, penalizing incitement to prostitution.

The Committee notes that, in its concluding observations on the Government’s combined fourth, fifth and sixth periodic reports of January 2006 (CEDAW/C/VEN/CO/6, paragraphs 27 and 28), the Committee on the Elimination of Discrimination against Women expressed concern about the lack of information on the causes and extent of prostitution, as well as the trafficking of women and girls, in particular the incidence of these phenomena in border areas. The Committee on the Elimination of Discrimination against Women, while noting the preventive efforts in place aimed at addressing the root causes of prostitution, expressed concern that insufficient steps have been taken to curtail the exploitation of prostitution and to discourage demand. It urged the Government to take all appropriate measures for this purpose. The Committee of Experts further notes that, according to the information contained in the Government’s second periodic report to the Committee on the Rights of the Child in December 2006 (CRC/C/VEN/2, paragraph 187), child prostitution is one of the most serious problems confronting the country.

The Committee notes that the convergence of information demonstrates the existence of the trafficking of children under 18 years of age and their use, procuring or offering for commercial sexual exploitation and expresses concern at the situation of these children. ***It requests the Government to take the necessary measures to ensure in practice the protection of children under 18 years of age against sale and trafficking for sexual exploitation, and specifically for prostitution. The Committee also requests the Government to provide information on the effect given in practice to the provisions of the national legislation, including statistics on the number and nature of the infringements reported, the investigations conducted, prosecutions, convictions and penal sanctions applied.***

***Article 5. Monitoring mechanisms. As Article 3(a) and (b) of the Convention relate to offences of a criminal nature, the Committee requests the Government to indicate whether monitoring mechanisms in addition to the general labour and social security inspectorate have been established to monitor the implementation of these provisions of the Convention.***

***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 children from these worst forms of child labour and ensuring their rehabilitation and social integration.*** The Committee notes that the Government has adopted a National Plan of Action against Abuse and Commercial Sexual Exploitation (PANAESC), the objectives of which include the prevention and protection of children under 18 years of age from sexual exploitation and their rehabilitation. It further notes that, in its concluding observations of January 2006 (CEDAW/C/VEN/CO/6, paragraphs 27 and 28), the Committee on the Elimination of Discrimination against Women, while noting the socio-economic and preventive measures in place to address the root causes of prostitution, expressed concern that insufficient steps have been taken for rehabilitation. The Committee on the Elimination of Discrimination against Women urged the Government to take all appropriate measures, including the adoption and implementation of a comprehensive plan to suppress the exploitation of prostitution through, inter alia, the strengthening of prevention measures and by taking measures to rehabilitate victims of exploitation.

***The Committee hopes that the Government will take the necessary measures to give effect to the recommendations of the Committee on the Elimination of Discrimination against Women. It requests the Government to provide information on the results achieved in the context of the implementation of PANAESC with a view to: (a) preventing children under 18 years of age from becoming victims of sale and trafficking or their use, procuring or offering for prostitution; and (b) providing the necessary and appropriate and direct assistance for the removal of children from these worst forms of child labour and for their rehabilitation and social integration. In this respect, it would be grateful if the Government would indicate whether reception centres for child victims of trafficking have been established in the country, with an indication of the number of children actually received by such centres; and whether***

*specific medical and social follow-up programmes have been formulated and implemented for child victims of trafficking.*

*Article 8. International cooperation.* The Committee notes that the Bolivarian Republic of Venezuela is a member of Interpol, the organization which assists in cooperation between countries in the various regions, particularly to combat the trafficking of children. The Committee is of the view that international cooperation between law enforcement agencies, and particularly the judicial authorities and police forces, is indispensable to prevent and eliminate commercial sexual exploitation, including the sale and trafficking of children for this purpose, through the collection and exchange of information, and through assistance to detect and prosecute the individuals involved and to repatriate victims. ***The Committee requests the Government to take measures to cooperate with countries with which it shares frontiers, thereby strengthening security measures so as to bring an end to this worst form of child labour. It requests the Government to provide information on this subject.***

*Parts IV and V of the report form. Application of the Convention in practice.* The Committee notes that, in its conclusions on the Government's second periodic report of October 2007, the Committee on the Rights of the Child regretted the lack of information and data on the sexual exploitation and sale of children. It further notes that, in its concluding observations of January 2006 (CEDAW/C/VEN/CO/6, paragraph 28), the Committee on the Elimination of Discrimination against Women requested the Government to include in its next periodic report a comprehensive assessment, based on appropriate studies, on the causes and extent of prostitution, as well as the trafficking of women and girls, with information disaggregated by age and geographical area, and to provide details of the results achieved. ***In view of the convergence of information demonstrating the existence of the sale and trafficking of children under 18 years of age and their exploitation for prostitution, and particularly the lack of information on these worst forms of child labour, the Committee requests the Government to take the necessary measures to conduct a global evaluation of the causes and extent of the trafficking and prostitution of children under 18 years of age. It requests the Government to provide information in this respect.***

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

## Zambia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1976)**

The Committee notes the Government's report.

*Article 2, paragraph 3. Age of completion of compulsory schooling.* The Committee had previously observed that basic education is not compulsory in Zambia, but once a child is enrolled, attendance at school is compulsory. It had noted the International Trade Union Confederation's (ITUC) allegation that 25 per cent of primary-school age children do not receive any schooling and that in 1999 less than 29 per cent of children reached the secondary school level. It had requested the Government to provide information on the situation of children who were not enrolled in school and therefore were not obliged to attend school, and to indicate what measures were taken or envisaged to ensure that these children were not admitted to employment or work in any occupation below 15 years of age.

The Committee notes the Government's information that it is making tremendous efforts to ensure that the minimum age for admission to employment is not less than the minimum age of completion of compulsory schooling. It notes the Government's statement that primary education has been declared free and there is current political commitment to gradually expand free education to grade 12. In addition, a number of bursary schemes for orphaned and vulnerable children are in place, and the Ministry of Education has instituted a return to school policy for pregnant teenage girls. Moreover, the Government is providing skills training to children being withdrawn from the streets as well as from child labour. The Committee also notes that, according to the information available at the Office, in 2005 the Government of Zambia continued to implement its universal primary education programme called the "Basic Education Sub-Sector Investment Programme" (BESSIP), which specifically targets working children. The Committee welcomes the measures adopted by the Government. ***It encourages the Government to continue taking measures to increase school attendance – including through the introduction of compulsory schooling – and to reduce school drop-outs, so as to prevent the engagement of these children in child labour. It requests the Government to continue providing information on measures taken to this end and results achieved. The Committee also requests the Government to provide statistical information on attendance and drop-out rates at school.***

*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 notes the Government's information that the first child labour survey was carried out by the Zambian Government in 1999. It indicated that over half a million children were working. Agriculture accounted for over 80 per cent of these children, but children were also found working in fisheries, domestic labour, the urban informal sector (transport and small workshops), mining and quarrying. With regard to agriculture, children were primarily found working on smallholder farms as family labourers, but also in large-scale farming operations. It also notes the Government's

information that it is currently finishing its first National Labour Force Survey, which will include child labour and serve to update the 1999 survey. The Committee also notes the Government's information that extracts from the inspection section within the Ministry of Labour and Social Security have not yet been comprehensively documented since the child labour component was only recently introduced in the integrated inspection form. However, with the support of ILO/IPEC, cases of working children have been detected and a number of these children have been withdrawn from labour. In particular, under the Capacity Building Project (CBP), 3,643 children were found working, of which 2,017 were withdrawn and 1,626 prevented. During the Baseline Survey of Child Labour Prevalence in Commercial Agriculture (COMAGRIC project), 1,542 children were found working, of which 699 were withdrawn and 1,411 prevented. The Committee takes due note of this information. It nevertheless observes that a large number of children under the age of 15 continue to work in the informal economy. ***The Committee strongly encourages the Government to renew its efforts to progressively improve this situation. It also requests the Government to supply a copy of the National Labour Force Survey, as well as extracts from the reports of inspection services, when available, information on the number and nature of contraventions reported and penalties applied.***

The Committee is also addressing a direct request to the Government concerning certain other points.

### **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. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously noted the allegations of the International Trade Union Confederation (ITUC), according to which there were reports of trafficking of children to neighbouring countries for the purpose of forced prostitution. The ITUC also indicated that combatants from neighbouring Angola kidnaped Zambian children and bring them to Angola to perform various forms of forced labour.

The Committee noted that sections 2, 4B(1) and 17(B)(1) of the Employment of Young Persons and Children's Act of 1933, as amended by Act No. 10 of 2004, prohibits the sale and trafficking of children and young persons under 18 years of age. The trafficking of persons for sexual exploitation is also prohibited under section 257 of the Penal Code. Section 261 of the Penal Code further provides that "any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave" commits an offence. The Committee also noted that sections 4(B) and 17(B) of the Employment of Young Persons and Children's Act, as amended in 2004, provide for a fine of 200,000 to 1 million penalty units and five to 25 years' imprisonment for breach of the provisions prohibiting the sale and trafficking of children.

The Committee also noted that ILO/IPEC launched, in March 2004, a one-year action programme to combat child trafficking and commercial sexual exploitation of children in four towns in Zambia, namely Kapiri Mposhi, Chirundu, Lusaka and Livingstone. According to the ILO/IPEC action programme, there are reports of children being trafficked from the United Republic of Tanzania to Zambia, and from Zambia to Angola, the Democratic Republic of the Congo, Namibia and Zimbabwe. The Committee further observed that, according to an ILO/IPEC study conducted in 2002, there were reports of internal child trafficking, especially in the central province, for the purpose of employing children in farms. Teenagers are also reported to be trafficked to South Africa, Germany, Finland, France, Greece, Malawi, Namibia, Russian Federation, Sweden, Denmark and Italy. The programme's objectives are to: (i) conduct a rapid assessment to determine the extent of child trafficking; (ii) raise awareness on this issue; (iii) establish, train and strengthen community volunteer teams to quickly respond to cases of child trafficking; (iv) strengthen the capacities of community social workers, police victim support unit officers, the judiciary and immigration officers to effectively implement the activities; and (v) conduct direct actions to withdraw, rehabilitate and reintegrate child victims of trafficking.

The Committee consequently noted that, although the trafficking of children for labour or sexual exploitation is prohibited by law, it remains an issue of concern in practice. The Committee reminded the Government 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 prohibition and elimination of the worst forms of child labour as a matter of urgency. ***The Committee accordingly invites the Government to redouble its efforts to improve the situation and to take, without delay, the necessary measures to eliminate the internal and cross-border trafficking of children under 18 for labour and sexual exploitation. It also asks the Government to take the necessary measures to ensure that persons who traffic in children for labour or sexual exploitation are prosecuted and that sufficiently effective and dissuasive penalties are imposed. Finally, the Committee requests the Government to provide information on the results achieved under the above ILO/IPEC programme with regard to the removal, rehabilitation and social integration of child victims of trafficking.***

*Article 7, paragraph 2. Time-bound measures. Clause (d). Identifying and reaching out to children at special risk.* The Committee noted the ITUC's indication that the number of street children in the capital Lusaka nearly tripled over the 1990s. It adds that since the number of Zambians dying of HIV/AIDS has increased, the number of orphans has increased too and that nearly all of these children are working, particularly in hazardous work. According to UNDP, 16 per cent of the population aged 15 to 49 is living with HIV/AIDS.

The Committee also observed that Zambia participates together with Uganda in an ILO/IPEC pilot project entitled "Combating and preventing HIV/AIDS-induced child labour in sub-Saharan Africa" (September 2004–December 2007). According to the project report (page v), Zambia counted 630,000 children orphaned by HIV/AIDS in 2003. The project aims at expanding and sustaining education and skills training opportunities for child orphans withdrawn from the worst forms of child labour and preventing 3,600 children from engaging in such activities. The project also aims at using its experiences to expand the knowledge base around the issues of child labour and HIV/AIDS, in order to generate appropriate policy responses and expand the resources available to eliminate the worst forms of child labour, and promote a reduction in HIV/AIDS-related risks for girls and boys. According to the above ILO/IPEC project, Zambia has taken positive steps to combat child labour and HIV/AIDS. Thus, the draft national AIDS policy addresses the difficult situation of children orphaned by HIV/AIDS, including some 6 per cent who are street children. Some organizations provide services, such as psychological counselling, skills training,

educational assessment and placement, food, clothing and health care for orphaned and vulnerable children. Orphaned children are thus withdrawn from the street and are provided with educational assistance. The Committee nevertheless noted that the ILO/IPEC report indicates that “the implications of the pandemic for abusive child labour remains unremarked” (Annex 9, page 96).

**Considering that the HIV/AIDS pandemic has serious consequences for orphans who are more exposed to the worst forms of child labour, the Committee encourages the Government to pursue its efforts to combat HIV/AIDS-induced child labour and to provide information on the results achieved.**

*Article 8. International cooperation.* The Committee noted that Zambia is a member of Interpol, which helps cooperation between countries in the different regions, especially in the fight against trafficking of children. **The Committee asks the Government to provide information on any measures taken or envisaged to cooperate with countries to which Zambian children are trafficked.**

*Parts IV and V of the report form.* **The Committee requests the Government to provide a copy of available data on trafficking of children for labour and sexual exploitation, including inspection reports, and information on the extent and trends of this worst form of child labour, the number and nature of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.**

The Committee is also addressing a request directly to the Government concerning other points.

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

## Zimbabwe

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee notes the Government’s report. It also notes the communication of the Zimbabwe Congress of Trade Unions (ZCTU) dated September 2005, as well as the Government’s reply thereto. **The Committee requests the Government to provide information on the following points.**

*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 notes the Government’s information that the labour law reform is ongoing in Zimbabwe and that, in this framework, the Government will be consulting the social partners on this issue. **In the framework of the labour law review, the Committee encourages the Government to take the necessary measures to ensure that self-employed children benefit from the protection afforded by the Convention. It 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 notes the ZCTU’s contention that children as young as 6 years work on farms in order to pay for their school fees. It also notes 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 notes the Government’s information that consultations with the Ministry of Education, Sport and Culture will be made concerning the legislation fixing a specific age for the completion of compulsory schooling. Moreover, the Government indicates that it has 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 notes 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 is of the view that compulsory education is one of the most effective means of combating child labour. **It 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 notes the Government's statement that it recognizes 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 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 notes the Government's information that it will 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 notes 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 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 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 notes the ZCTU's statement that the Government has failed to put in place measures that will 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 notes the Government's statement in reply to the ZCTU's allegations that it is not aware of situations in which 6-year-old children are working on farms.

The Committee, however, notes 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 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 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.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 5** (Haiti, Saint Lucia, United Kingdom: Guernsey); **Convention No. 6** (Cambodia, Central African Republic, Congo, Estonia, Latvia, Madagascar, Mali, Myanmar, Bolivarian Republic of Venezuela, Viet Nam); **Convention No. 10** (Senegal); **Convention No. 33** (Netherlands: Netherlands Antilles); **Convention No. 59** (Lebanon, New Zealand, United Republic of Tanzania, United Kingdom: Anguilla, Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, Montserrat, Yemen); **Convention No. 77** (Albania, Bulgaria, Comoros, Haiti, Kyrgyzstan, Lebanon, Malta,

Nicaragua, Portugal, Slovakia, Tajikistan, Turkey, Ukraine); **Convention No. 78** (Albania, Bulgaria, Comoros, Haiti, Kyrgyzstan, Lebanon, Malta, Portugal, Slovakia, Tajikistan, Ukraine); **Convention No. 79** (Kyrgyzstan, Russian Federation, Ukraine); **Convention No. 90** (Bosnia and Herzegovina, Guinea, Lebanon, Netherlands, Serbia, Swaziland); **Convention No. 123** (Mongolia, Rwanda, Swaziland, Turkey, Uganda); **Convention No. 124** (Bolivia, Kyrgyzstan, Madagascar, Malta, Slovakia, Tajikistan, Uganda, Ukraine, United Kingdom, Viet Nam, Zambia); **Convention No. 138** (Bahamas, Barbados, Belize, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Central African Republic, Colombia, Congo, Democratic Republic of the Congo, Equatorial Guinea, Greece, Indonesia, Republic of Korea, Lebanon, Lesotho, Lithuania, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Republic of Moldova, Mongolia, Morocco, Namibia, Nepal, Netherlands, Niger, Nigeria, Oman, Panama, Papua New Guinea, Paraguay, Philippines, Portugal, Russian Federation, Rwanda, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Switzerland, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, Thailand, Togo, Tunisia, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Viet Nam, Yemen, Zambia); **Convention No. 182** (Algeria, Angola, Azerbaijan, Bahamas, Bahrain, Bangladesh, Belize, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Congo, Costa Rica, Democratic Republic of the Congo, Equatorial Guinea, Greece, Honduras, Indonesia, Kenya, Republic of Korea, Kuwait, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Republic of Moldova, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Thailand, Togo, Tunisia, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Kingdom: Guernsey, Uruguay, Bolivarian Republic of Venezuela, 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. 5** (United Kingdom: Jersey); **Convention No. 10** (United Kingdom: Isle of Man); **Convention No. 77** (Luxembourg, Panama, Tunisia); **Convention No. 78** (Luxembourg, Panama); **Convention No. 79** (Lithuania, Poland); **Convention No. 90** (Lithuania, Norway, Pakistan, Poland, Sri Lanka, Uruguay); **Convention No. 123** (Spain); **Convention No. 138** (Luxembourg, Malta, Norway); **Convention No. 182** (Luxembourg).

## Equality of Opportunity and Treatment

### Afghanistan

#### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)**

1. *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.***

2. 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.***

3. 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.***

4. *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.***

#### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)**

1. *Legislative developments.* The Committee notes that according to the Government, a new Labour Code was submitted to the National Assembly for approval in April 2007. The new Code provides in section 9(1) that there should be no discrimination in recruitment, payment of wages and allowances, occupations, the right to education and social protection, but it does not appear to cover discrimination in other terms and conditions of employment or with respect to termination. The Committee also notes that no definition of “discrimination” is set out in the Code. ***The Committee requests the Government to provide information on the status of the new Labour Code, and its entry into force. The Committee also asks the Government to include a definition of discrimination, in accordance with Article 1 of the Convention, and ensure that the prohibition of discrimination covers all terms and conditions of employment and termination of employment as well as all the prohibited grounds listed in the Convention. The Committee requests the Government to provide information on the measures taken in this regard.***

2. The Committee further notes that section 9(2) of the new Labour Code provides that during pregnancy and after child birth, and in other cases envisaged by the legislation, certain benefits are provided to women in the workplace. It notes with interest that it is forbidden to refuse to employ women or to reduce their wages due to pregnancy or nursing of children (section 125) and that additional breaks are available for nursing mothers (section 124). In addition, section 126 envisages the establishment of kindergartens and nurseries at the workplace. Section 120 prohibits the employment of women in work that is physically arduous or harmful to health or that is being carried out underground. Noting that a list of the specific types of work concerned is to be prepared by the Government, the Committee recalls that such exclusions should not go beyond what is strictly necessary to protect women’s reproductive capacity, and that 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 and to provide the texts of any other legislative provisions regulating the employment of women. The Committee would also appreciate***

*information on the practical application of the above-noted provisions and their impact on women's equality in employment and occupation.*

3. *Application in practice.* The Committee notes from the report of the High Commissioner for Human Rights on the situation of human rights in Afghanistan that while women in Afghanistan have made significant advances, including regarding their participation in Parliament and the public sector, progress in the realization of gender equality continues to be held back owing to discrimination, insecurity and the persistence of customary practices (A/HRC/4/98, 5 March 2007, paragraph 13). The Committee notes with interest the various activities carried out by the Afghanistan Independent Human Rights Commission with regard to the promotion of equality of men and women. ***The Committee requests the Government to indicate the measures taken to promote equal access to vocational training and employment and occupation of women, disabled persons and disadvantaged ethnic minorities, including those from nomadic communities. In this regard, the Government is requested to collect statistical information on the number of men and women participating in the various vocational training programmes and to provide this information to the Committee.***

4. The Committee encourages the Government, in cooperation with workers' and employers' organizations, as well as other appropriate bodies such as the Afghanistan Independent Human Rights Commission and women's organizations, to raise awareness and understanding of the non-discrimination provisions of the Labour Code and the provisions of the Convention. ***It requests the Government to indicate in its next report any awareness-raising or training activities carried out or planned with regard to the Labour Code's non-discrimination provisions targeting, in particular, workers' and employers' representatives and public officials responsible for monitoring the Code's application.***

## Algeria

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)**

1. In its previous observation, the Committee reminded the Government that, although forbidding sex-based wage classifications is an important aspect of equal remuneration, the simple fact that men and women are paid the same for doing the same work does not mean that inequality in remuneration does not exist. The Committee drew the Government's attention to the fact that discrimination may still arise from the fact that women are more heavily concentrated in certain jobs and in certain sectors of activity where work is poorly paid in relation to the value of the work performed. The Committee reminded the Government of the importance of eliminating this type of discrimination in order to give full effect to the principle of equal remuneration for work of equal value. In this context, the Committee asked the Government to supply information on the measures taken or envisaged to examine remuneration systematically and to compare those jobs in which men predominate with those in which women predominate, in order to identify and rectify instances of pay discrimination.

2. *Statistical information on levels of remuneration disaggregated by sex.* The Committee notes the interest expressed by the Government in identifying, with the help of statistical data, possible cases of discrimination arising from the segregation of women in low-paid jobs. The Committee notes that the survey scheduled for 2006 concerning levels of remuneration disaggregated by sex started in March 2007 after being postponed. The Committee reminds the Government of the importance of incorporating the statistical elements listed in the general observation of 1998 in the survey on wages. Moreover, the Committee notes that the Government would be interested in receiving technical assistance from the ILO to provide clarification on the gathering of statistical data. ***The Committee hopes that the Government will take the necessary measures to benefit from technical assistance from the ILO as soon as possible. The Committee hopes to receive the results of the survey on wages and again asks the Government to supply any additional information, including documents and research reports relating to this work.***

3. *Objective evaluation of jobs.* The Committee notes that the Government has not supplied information on the measures taken or envisaged to promote an objective evaluation of jobs to enable a comparison of posts in which men predominate with those in which women predominate. The Committee reiterates the importance of this type of evaluation in rectifying inequalities in pay in cases where women and men perform work which is different but of the same value, as defined by an objective valuation of the tasks to be accomplished. In this context, the Committee draws the Government's attention to its general observation of 2006 on this matter (see, in particular, paragraph 5). ***The Committee again asks the Government to supply information on the measures taken or envisaged to undertake a comparison, on the basis of objective methods of job evaluation, of posts in which women predominate with those in which men predominate.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)**

1. *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.*

2. *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.*

3. *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.*

4. *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.*

## Angola

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1976)**

The Committee notes that for several years the Government's report has not replied to many of the points raised in its comments. The Committee is aware that because of the crisis in the country and its social and economic consequences, the collection of data on discrimination in access to employment and training is difficult. The Committee also notes that there may be difficulties in drawing up reports because of institutional and administrative shortcomings. *Taking due account of this context, the Committee hopes that the Government will do its utmost, in so far as the means are*

*available, to send in its next report full information on the administrative, legislative or other measures that aim expressly to eliminate discrimination on all the grounds prohibited by the Convention (race, colour, sex, religion, political opinion, national extraction or social origin) and to promote equality of opportunity and treatment in employment and occupation. The Committee likewise asks the Government to provide full information on the manner in which the Convention is applied in practice, in accordance with Parts II–V of the report form. It reminds the Government that in order to meet fully its obligation to report on the Convention, the Government may seek technical assistance from the Office should it so wish.*

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

## Argentina

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)**

The Committee notes that communications have been received from the Federation of Government Professional Employees of the Autonomous City of Buenos Aires, dated 4 June 2007 and 2 October 2007. The Committee also notes the communication sent by the General Confederation of Labour of the Republic of Argentina (CGTRA), dated 4 September 2007. The Committee will examine these communications at its next session, together with any comments that the Government may wish to make. The Committee will also examine the Government's report at its next session due to its late arrival.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1968)**

1. The Committee notes that the Federation of Professional Employees of the Government of the Autonomous City of Buenos Aires sent a communication on 4 June 2007 and that the Office requested further information from the union on the relation between the contents of the communication and the grounds of discrimination prohibited by the Convention. The Committee notes that the union sent its reply on 2 October 2007. The Committee will examine these communications in detail at its next session, together with any comments that the Government may consider it appropriate to make, as well as the Government's report which, due to its late arrival, could not be examined at this session.

2. The Committee notes a communication from the General Confederation of Labour of the Republic of Argentina (CGTRA), dated 4 September 2007. The Committee will examine the communication in detail at its next session, together with any comments that the Government may consider it appropriate to make. The Committee welcomes the fact that, according to the communication, the Secretariat for Equality of Opportunity and Gender of the CGTRA has developed and is implementing a programme to promote equality of opportunity within trade union organizations in Argentina, as well as at the workplace, through improving women's capacity and trade union participation so as to achieve equality in the field of labour. *The Committee hopes that, when making its comments on this communication, the Government will in particular provide information on the effect given to the Act on a quota for trade union members (regarding the participation of women) and on the measures adopted in this respect by the Tripartite Commission on Equality of Opportunity and Treatment between Men And Women in the World of Work (CTIO).*

3. The Committee notes that on 12 September 2007 a communication was received from the Confederation of Argentinian Workers, which will be examined together with the comments that the Government may deem it appropriate to make.

## Australia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1974)**

1. *Wage fixing. Australian Fair Pay Commission.* The Committee notes that in the context of the workplace reforms through the Workplace Relations Amendment (Work Choices) Act 2005, which came into force in March 2006, most wage-fixing responsibility was transferred from the Australian Industrial Relations Commission (AIRC) to the Australian Fair Pay Commission (AFPC). In its previous comment, the Committee noted concerns raised by the Human Rights and Equal Opportunity Commission (HREOC) regarding the removal of state industrial relations jurisdiction, and thereby removing an important avenue of redress for workers with respect to pay equity matters. In its submission to the AFPC, the HREOC noted that state industrial tribunals have had the most success in assessing historical undervaluation of women's skills and determining the work value of occupations traditionally carried out by women, but that now the AFPC is the only body with direct responsibility for pay. The Committee also notes that the AFPC has announced two increases in federal minimum wages. *Given the central role of the Australian Fair Pay Commission in determining wages, the Committee asks the Government to provide specific information on measures taken or envisaged by the AFPC to narrow the gender pay gap and to promote the principle of equal remuneration for work of equal value, including information as to how progress in this regard is monitored.*

2. *Australian Workplace Agreements.* In its previous observation, the Committee raised concerns regarding the impact, on equal remuneration for men and women for work of equal value, of the move away from award regulation to workplace-based regulation in the setting of wages, in particular through the Australian Workplace Agreements (AWAs).

In this context, the Committee asked the Government to provide detailed information on the wages and benefits negotiated under these agreements, and for information on the practical impact of AWAs on the remuneration gap between men and women workers. The Government states in response that no studies have been undertaken assessing the practical impact of the AWAs on the gender pay gap. However, the Government indicates that a report provided to the Minister for Employment and Workplace Relations, pursuant to section 844 of the Workplace Relations Act, 1996, includes information on the developments in bargaining for the making of workplace agreements but has not yet been released publicly. The Committee notes that the Queensland Industrial Relations Commission (QIRC) is undertaking an inquiry into the impact of the Work Choices reforms on pay equity in Queensland. The Committee also notes that a workplace industrial relations survey was undertaken in 2006 in the State of Victoria, with the intention of providing a benchmark for Victorian workplaces following the introduction of the Work Choices reforms, and that two reports were published subsequently, including *Women in the Victorian Workplace*, which found that workplaces operating under collective agreements provided better pay and conditions than those dependent on individualized bargaining. ***The Committee once again asks the Government to provide detailed information on the wages and benefits negotiated under AWAs, including with regard to family-friendly provisions, disaggregated by sex and sector, and to forward a copy of the report prepared pursuant to section 844 of the Workplace Relations Act as soon as it is publicly available. The Committee also urges the Government to take steps to undertake a study, with the cooperation of the employers' and workers' organizations, on the practical impact of the AWAs on the gender pay gap. The Committee would also welcome information on any follow-up to the workplace industrial relations survey of Victoria in determining the impact of the Work Choices reforms, as well as details of the results of the inquiry undertaken by the QIRC.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)***

1. In response to the Committee's previous observation regarding the impact of reforms concerning structures and programmes for indigenous peoples, with respect to promoting equal access to education, training and employment, the Government indicates that the unemployment rate of indigenous peoples has decreased from 16.5 per cent in 2005 to 14.3 per cent in 2006. The Government refers to plans to prioritize indigenous education and underlines the impact of the Community Development Employment Projects (CDEP), resulting in 1,575 jobs in 2004–05 and increasing to 5,770 jobs in 2006–07. The Committee also notes the Structured Training and Employment Project (STEP), the Employment Related Services (ERS), as well as job placements by Job Network members, and the National Strategy for Vocational Education and Training. The Government states that many of the reforms were designed to increase indigenous economic independence by reducing dependency on passive welfare through stimulating employment and economic development opportunities for indigenous peoples.

2. The Committee also notes the concerns raised in this respect by the Human Rights and Equal Opportunity Commission (HREOC) in the 2006 Social Justice Report, including concerns regarding the complexity of the new arrangements, the lack of sufficiently targeted measures to address the existing level of inequality and discrimination experienced by indigenous peoples, and the lack of mechanisms for engagement with indigenous peoples. The HREOC also notes that the Government has indicated that in future, 7,000 workers will lose their CDEP wage and that the indigenous employment centres will be abolished. The HREOC has made a number of recommendations, including that an inquiry be conducted aimed at, among other things, identifying the following: (i) progress in addressing existing inequalities in indigenous peoples' access to mainstream services; (ii) progress in ensuring that processes are sufficiently targeted; (iii) effective, sustainable and representative mechanisms for the participation of indigenous peoples; and (iv) the adequacy of performance, monitoring and evaluation mechanisms for the new arrangements. In addition, the Committee on the Elimination of Discrimination against Women, has expressed concern about the ongoing inequalities suffered by Aboriginal and Torres Strait Islander women "whose enjoyment of human rights remains unsatisfactory in many areas, particularly with regard to employment, education ..."; it recommended that targeted measures be adopted and that measures be taken to increase their access and awareness of the availability of targeted social services in all sectors (CEDAW/C/AUL/CO/5, 3 February 2006, paragraphs 30–31).

3. Noting that the Government is moving away from a system of special measures regarding education and employment of indigenous peoples, to bring them closer to "mainstream" services, the Committee recalls the importance of special measures in ensuring real equality of opportunity and treatment in practice, taking into account the diversity of situations of certain persons so as to prevent discriminatory practices (Equality in employment and occupation, Special Survey, 1996, paragraph 135). ***In this context, the Committee asks the Government to provide information on the steps taken to implement the recommendations set out in the Social Justice Report as they relate to education and employment opportunities of indigenous peoples. The Committee also requests the Government to provide further information on the reforms undertaken and envisaged, including their practical impact on education, training and employment of indigenous Australians, both women and men, including statistics disaggregated by sex.***

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

## Bolivia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (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:

1. In its previous observation, the Committee requested the Government to amend section 3 of the General Labour Act, under which the proportion of female staff may not exceed 45 per cent in enterprises and establishments which, by their nature, do not require the use of a larger proportion of women workers. The Committee also requested that the amendment to the Labour Act take into account paragraph 5 of the ILO resolution on equal opportunities and equal treatment for men and women in employment, adopted in 1985, since this would provide an opportunity to re-examine, in the light of up to date scientific knowledge and technical changes, all protective legislation applying solely to women with a view to revising and repealing it, as appropriate, in consultation with the social partners and women workers, taking into account the measures aimed at promoting equality for men and women in employment. The Committee notes that, according to the Government, the current social and political conditions make any amendment to the General Labour Act impossible, mainly because of the workers themselves, who, fearing that any reform will open the way to the "flexibilization of work", prefer to oppose any change. The Government indicates that although the General Labour Act Bill, prepared with the technical assistance of the ILO, is ready, it has not yet been adopted for the abovementioned reasons. The Government also indicates that the legal provision in question has fallen into disuse and is not applied in practice, and that the amendment of this section will therefore be a mere formality to adapt the provision to the reality of the situation in Bolivia. ***Noting the above, the Committee hopes that the Government will consider at the earliest opportunity bringing the legislation into line with the practice and asks to be kept informed in this regard.***

2. The Committee notes with interest the 2004–07 National Public Policies Plan for the full exercise of women's rights, prepared by the Vice-Ministry of Women, approved by Ministerial Decision No. 006 of 24 January 2005 and authenticated by Supreme Decree No. 28035 of 7 March 2005. In the economic dimension, the Plan identifies a context of ethnic poverty and discrimination common to indigenous men and women, natives and farmers, as well as gender-related elements of discrimination due to the sexual division of labour, the occupational pattern by gender and the segmentation and concentration of the female labour force, all of which widen the gender inequity gap in the economic field. The Plan puts forward a series of policies to eliminate discrimination, including institutional, training-related, economic and legal measures. ***The Committee requests the Government to keep it informed of the measures taken to apply the Plan and of their impact in practice. The Committee, noting that one of the development objectives of the Plan is to "amend laws that are sources of inequity for women and increase timely and effective access for women to the justice system, within the framework of the new Political Constitution of the State, until 2007", would be grateful if the Government would keep it informed of any action taken to meet the abovementioned objective and of any progress made. The Committee also hopes that by amending the legislation to meet this objective, the Government will make an effort to achieve consensus so as to amend section 3 of the General Labour Act in the manner indicated by the Committee and that it will keep the Committee informed 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 is raising other points in a request addressed directly to the Government.

## Burkina Faso

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)***

***Legislation. Work of equal value.*** The Committee noted in its previous comments that section 175 of the Labour Code (Act No. 33-2004/AN of 14 September 2004) did not clearly reflect the principle of the Convention. Section 175 expressly establishes the principle of equal pay for work of equal value but at the same time provides that where conditions of work are equal, wages shall be equal for all workers. The Committee notes that these provisions of the Labour Code are undergoing revision. In the Committee's view, it would be important in the course of this revision to clarify that the principle of equal pay for work of equal value also applies to situations in which men and women working in different conditions or having different qualifications nevertheless perform work of equal value for the purpose of remuneration. In this regard, the Committee draws the Government's attention to its general observation of 2006. ***It hopes that in the course of the revision of the Labour Code, the Government will take the necessary measures in order to bring section 175 of the Labour Code into line with the principle of the Convention. It asks the Government to provide a copy of the new provisions of the Code.***

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

## Cameroon

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1970)***

The Committee notes the communication from the General Confederation of Labour – Liberty Cameroon (CGTL) of 27 August 2007.

1. ***Article 2 of the Convention. Work of equal value. Collective agreements.*** In its previous comments, the Committee noted that section 37(1) of the national collective agreement for dockworkers was not fully consistent with the principle set forth in the Convention. This provision does not reflect the principle of equal remuneration for work of equal value and merely ensures that wages are equal for all workers in equal conditions of work and with equal professional

ability, regardless of sex. The Committee notes the Government's statement to the effect that between 2002–07, 17 national collective agreements were concluded applying the principle of equal wages in equal conditions of work. The Committee also notes that according to the communication from the CGTL, although equal remuneration is established in law and in collective agreements, employers are refusing to apply this principle. The Committee notes that the Government has not provided any information on the steps taken to promote the full application of this principle in collective agreements. Consequently, it recalls that under *Article 2* of the Convention, the Government has undertaken to promote and, if necessary, ensure the application of the principle of equal remuneration for men and women by means of national laws or regulations, legally established or recognized machinery for wage determination, collective agreements or a combination of these various means. ***The Committee, therefore, hopes that the Government will take steps to convince the social partners of the need to bring the provisions of collective agreements into line with the principle set forth in the Convention, and asks the Government to send information on the results achieved in this respect. The Committee also asks the Government to provide information on the steps taken to ensure the effective application of the principle of equal remuneration for work of equal value.***

2. *Article 2. Scope of the principle set forth in the Convention.* In its previous comments, the Committee noted that section 70(a) and (b) of the collective agreement for CAMRAIL was not in line with the principle set forth in the Convention. This provision limits the granting of benefits in the form of transport facilities to the wife and children of the employee, thereby excluding the husband of a female employee from such benefits. On that occasion, the Committee recalled that the principle of equal remuneration for men and women for work of equal value applies not only to the basic wage but also to any additional emoluments payable directly or indirectly, whether in cash or in kind. The Committee, therefore, asked the Government to take the necessary measures to bring this section into line with the Convention. In this respect, the Government states that according to section 7 of the CAMRAIL agreement, the revision of provisions of the agreement may take place at the initiative of each of the signatory parties, but not at that of the Government, which has countersigned the agreement. The Government adds that it stands ready to support the party which takes the initiative to revise section 70 of the agreement. ***The Committee urges the Government to take the necessary steps, in collaboration with the social partners, to ensure that the provisions of section 70 of the CAMRAIL agreement are in full conformity with the principle set forth in the Convention. Furthermore, the Committee once again asks the Government to take concrete steps, in cooperation with the social partners, to ensure that collective agreements such as those noted above are free from discriminatory provisions and gender-biased language with respect to remuneration and, in particular, additional allowances and benefits.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1988)***

The Committee regrets to note that the Government's report does not provide full information on all the points raised in its previous observation. The Committee reiterates the importance of pursuing dialogue on the application of the Convention so that it can identify the progress made by the Government in the application of the Convention and the remaining challenges which it faces. The Committee, therefore, hopes that the Government will make every effort to supply full information on the points set out below.

1. *Articles 1 and 2 of the Convention. National policy and legislation on equality.* For a number of years, the Committee has expressed its concern that the preamble to the national Constitution, section 1(2) of the 1992 Labour Code, section 5 of the Public Service Regulations, and section 7 of the Education Act do not prohibit discrimination on grounds of race, colour or national extraction, as required by *Article 1(1)(a)* of the Convention. The Committee has also repeatedly commented on the lack of a national policy to promote equality of opportunity and treatment in respect of employment and occupation. It regrets once again to note that the Government's report does not provide any new information on the finalization of the national policy on equality and merely refers to the prohibition of discrimination as set out in the national legislation. In this regard, the Committee is bound to remind the Government that while the affirmation of the principle of equality in national legislation represents an important step in the implementation of the Convention, it is not sufficient in itself to constitute a national policy within the meaning of *Article 2* of the Convention. Such a policy necessarily includes the adoption and implementation of specific proactive measures, such as educational and awareness-raising programmes, aimed at the promotion of equality in employment and occupation with respect to all seven grounds listed in the Convention.

2. ***The Committee trusts that the Government will take the necessary steps to ensure the application of the Convention and urges the Government to provide detailed information in its next report on the following:***

- (a) ***the measures taken or envisaged to bring the abovementioned legislative instruments into conformity with the provisions of the Convention with a view to introducing an explicit definition and prohibition of all forms of discrimination on any of the seven grounds listed in Article 1(1) of the Convention, namely, race, colour, sex, religion, political opinion, national extraction and social origin;***
- (b) ***the progress made in the adoption of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation.***

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 of the Convention's principle in law.* The Committee recalls its previous comments concerning section 96 of Act No. 61/221 of 6 June 1961, issuing the Labour Code, which does not fully reflect the principle of equal remuneration for men and women for work of equal value, as enshrined in the Convention. In this regard, the Committee notes from the Government's report that section 9 of the draft Labour Code, which is to replace the existing section 96, provides that "Under equal working conditions, remuneration is equal. The law guarantees equality of opportunity and treatment in employment and at work for all, without any discrimination." The Committee draws the Government's urgent attention to the fact that section 9 of the draft Labour Code is not in conformity with the Convention. Under the Convention, it is not sufficient to require equal remuneration in the case of equal working conditions, as is set out in the first sentence of section 9. The Government's attention is drawn to the Committee's 2006 general observation which further explains this point. The Committee asks the Government to take the necessary measures to amend section 9 of the draft Labour Code with a view to giving full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee reminds the Government of the possibility to seek technical assistance from the ILO on this matter. ***The Committee asks the Government to keep it informed of any developments which may occur in this regard.***

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)**

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

1. The Committee notes the Government's report, but regrets that it does not adequately reply to the matters raised in its previous observation. The Committee, therefore, hopes that the Government will make every effort to provide full information on all the matters raised below in its next report.

2. *Article 1(1)(a) of the Convention. Definition of discrimination.* The Committee once again refers to its previous comment concerning article 32 of the Constitution, which states that no one can be discriminated against in their work on the grounds of origin, opinions, beliefs, sex or matrimonial situation, but does not include the other grounds of discrimination set out in *Article 1(1)(a)* of the Convention, particularly race and colour. The Committee notes the statement of the Government that race and colour were never criteria for discrimination in Chad and that the legislator therefore simply omitted these terms in the Constitution. While stressing the equal importance of all grounds listed in the Convention, the Committee observes that the grounds of race and colour are of particular significance to promote and ensure equality of opportunity and treatment in employment and occupation in multi-ethnic societies. ***The Committee hopes that the Government will consider amending article 32 of the Constitution or adopting legislation so as to bring it fully into line with the Convention. Noting from the report that the regulations enforcing the Labour Code will take into account the grounds of race and colour, the Committee requests the Government to provide information on the progress made in this respect and to provide a copy of these regulations as soon as they are adopted.***

3. *Part V of the report form. Practical application and statistics.* The Committee notes from the Government's report that it has not recorded any instances of discrimination in legislation, administrative practice or in relations between persons or groups of persons. It also notes that there are no judicial decisions relevant to the Convention and that no practical difficulties have been encountered with respect to its application. The Committee reminds the Government that the absence of cases is not necessarily an indication that discrimination does not exist in practice. It also emphasises in this context that the collection of relevant data is important for both the Government and the Committee to evaluate the progress made in the application of the principle of the Convention. ***Noting that the National Office for the Promotion of Employment does not have statistics at its disposal regarding the application of the Convention, the Committee hopes the Government will make every effort to include information in its next report such as statistical data disaggregated by sex, race, ethnicity and religion in employment and occupation in the private and public sectors, along with any other information that may enable the Committee to assess how the provisions of the Convention are applied in practice.***

***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 matters in a request addressed directly to the Government.

## Chile

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1994)**

1. The Committee notes the detailed report sent by the Government and the information supplied in reply to its previous request. In particular, the Committee notes with interest the amendments to the Labour Code with regard to workers with responsibility for dependent children. The Committee also notes the Code of Good Labour Practices on Non-discrimination, the general terms of which contribute to a better application of the Convention.

2. *Articles 4 and 5 of the Convention.* The Committee notes with interest that Act No. 19824, published in the *Official Journal* of 30 September 2002, amending section 203(1) of the Labour Code, extends the obligation of maintaining crèches to those industrial and service centres that have the same corporate name or legal personality, which combined employ 20 or more workers. According to the Government's report, industrial or service establishments which separately employed less than 20 employees and which were previously not obliged to run a crèche will now have to do so as a result of being considered collectively. ***The Committee requests the Government to supply information on the impact of this measure, mentioning, in particular, whether there has been any increase in the number of childcare facilities as a result thereof.***

3. The Committee had requested the Government to extend the benefit of crèches to the children, under 2 years of age, of working fathers in keeping with the objective of the Convention. It notes the Government's indication that this request could be implemented only if the Government subsidized the additional costs which would be incurred by the enterprise. ***The Committee would be grateful if the Government would continue its efforts to extend the benefit of day-care centres to the children of working fathers in conformity with the Convention, and provide information on any developments in this respect. The Committee again asks the Government to supply information on the inspections undertaken in relation to the application of Act No. 19591 concerning the right to childcare.***

4. *Article 8.* In its previous comments, the Committee referred to section 195(2) of the Labour Code, which explicitly provides that fathers do not enjoy the employment protection set out in sections 201 and 174 of the Labour Code. The Committee had previously noted that, although section 195 grants maternity benefits to working fathers in the event of the mother's death, it explicitly stated that fathers do not enjoy the same protection from dismissal as that afforded to mothers. While noting the Government's statement that, by virtue of sections 159 and 160 of the Labour Code respecting termination of the employment contract, no worker may be dismissed on the grounds of their family situation, the Committee nevertheless noted that the explicit exclusion of working fathers from the protection afforded to working mothers by section 195(2), is not in conformity with the Convention. The Committee therefore once again recommended that the Government amend this provision with a view to establishing equality of treatment in working life between men and women with family responsibilities. The Committee notes with satisfaction that the amendments introduced by Act No. 19670, published in the *Official Journal* of 15 April 2000, modifies section 195 of the Labour Code to grant fathers the same protection against dismissal as mothers. It also notes that, as requested by the Committee, these provisions have been extended, under Act No. 20047 (published in the *Official Journal* of 2 September 2005), to single or widowed men or women who have adopted a child. ***The Committee requests the Government to provide information on the implementation of these new provisions.***

5. ***Bearing in mind the results of the "Survey on remuneration and labour costs – analysis by sex", which states that although the law entitles men to take leave for the purpose of childcare, this entitlement is rarely taken up because it does not correspond in ideological terms to the traditional male breadwinner role, the Committee invites the Government to continue to monitor this aspect and to keep it informed of any measures taken to encourage men to take such leave, and the results achieved.***

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

## Colombia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)***

1. The Committee notes the communication from the Single Confederation of Workers (CUT) which not only refers to the application of the Convention but also indicates that by 15 August 2007 the CUT, which is the most representative organization, had not received a copy of the Government's report. The CUT was therefore sending its comments without having seen the report and reserved the right to enlarge on them upon receiving it. The Committee notes that in its report sent on 25 July 2007, the Government indicates that it is forwarding a copy to the CUT amongst others. The Committee will address these comments in greater detail together with any comments the Government may wish to formulate.

2. *Work of equal value.* For several years the Committee has been pointing out that the Substantive Labour Code ought to be amended in order to establish expressly the principle of equal remuneration for work of equal value and to bring the national legislation into line with the Convention. It observed previously that section 5 of Act No. 823 of 10 July 2003 issuing rules on equal opportunities for women contains, as does section 143 of the abovementioned Code, a principle that is narrower than the one set forth in the Convention since it refers to equal wages for "equal work" and not "work of equal value", thus precluding any comparison of jobs that are different but that warrant equal remuneration because they are of equal value. The Committee asked the Government to consider amending the abovementioned provisions in order to bring them into line with the principle enshrined in *Article 2(1) of the Convention*.

3. The Committee notes that, according to the report, the Government considers that there is no need to amend the Labour Code in order to include the principle of equal value, because the Constitution provides that duly ratified international agreements "are an integral part of domestic legislation", Convention No. 100 being a case in point. According to the report, "there is a specific rule on work and equal pay which states that 'for equal work performed in a like post and according to the same schedule and conditions of efficiency, equal wages must be paid ...' (section 143 of the Labour Code)". As the Committee has pointed out previously, this provision does not reflect the principle of the

Convention, which includes but goes beyond the principle of equal pay for equal work performed in a like post. It draws the Government's attention to its general observation of 2006 on the Convention, in which it explains the concept of equal value, and hopes that the general observation may be of use in clarifying the differences between equal work and work of equal value and the importance of appropriate legislation in applying the Convention. In paragraph 3 of its general observation, the Committee said as follows: "In order to address ... occupational segregation, where men and women often perform different jobs, under different conditions, and even in different establishments, the concept of 'work of equal value' is essential, as it permits a broad scope of comparison. '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. Furthermore, the application of the Convention's principle is not limited to comparisons between men and women in the same establishment or enterprise. It allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers."

4. *Legislative framework.* In its general observation, the Committee stressed the importance of giving full legislative expression to the concept of work of equal value, since narrower provisions "hinder progress in eradicating gender-based pay discrimination against women at work". The Committee went on to underline that "such legislation should not only provide 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" (paragraph 6). ***Consequently, the Committee urges the Government to bring its legislation into line with the Convention's principle of equal remuneration between men and women for work of equal value, including section 143 of the Substantive Labour Code and section 5 of Act No. 183 of 2003, as well as all other provisions of the legislation on this subject, and to provide relevant information of progress achieved in this regard.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)***

1. The Committee takes note of the communication from the Single Confederation of Workers (CUT). In that communication, the CUT states, as the most representative organization, that as at 15 August 2007 it had not received a copy of the Government's report and was therefore sending its comments without having seen the report, reserving the right to expand on them upon receiving it. The Committee notes that in its report sent on 25 July 2007, the Government states that it is forwarding a copy to the CUT among other organizations. The Committee will examine the communication together with the comments the Government may wish to make. The Committee notes that the CUT indicates that the Judiciary has difficulties in applying the Convention although under the Constitution, it is directly applicable; the cut proposes that judges and administrative officials receive training to further their knowledge of the international treaties to which Colombia is a party. In its report, the Government refers to proposals to improve application of the Convention in the judicial system as part of the Strategic Plan for the defence of women's rights before the law in Colombia. ***The Committee accordingly invites the Government to provide information on any training envisaged and on measures to follow up on the Strategic Plan. It reminds the Government that it may seek technical assistance from the Office should it deem this necessary.***

2. *Discrimination on grounds of race and colour. Indigenous people and Afro-Colombians.* In its previous comments the Committee referred to situations in which indigenous people and Afro-Colombians were the subject of discrimination in employment and occupation. It also referred to the conditions of extreme poverty suffered by Afro-Colombians. The Committee notes that the Government mentions some activities with indigenous women but sends no information on the other matters. ***The Committee accordingly asks the Government to provide information on the situation of indigenous people and Afro-Colombians as regards training and employment, and on the Government's policy on equality in employment and training as regards these two groups.***

3. *Situation of the Roma.* In its previous comments the Committee expressed concern at the situation of the Roma, who are subject to discrimination. It notes that the Government has not sent the information requested on this matter. ***The Committee is concerned at the lack of a reply from the Government on this matter and again requests it to provide information on the work situation of the Roma and on the application to the Roma of the principle of equality of opportunity and treatment in employment and occupation.***

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

## **Costa Rica**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1962)***

1. The Committee notes with interest the activities undertaken by the National Institute for Women (INAMU) and the Gender Equality Unit of the Ministry of Labour and Social Security (MTSS) for the implementation of systematic plans to improve not only the quantity, but also the quality of employment for women, to which it refers in its direct request.

2. It also notes that on 8 March 2007 a draft amendment to the Act to combat sexual harassment was submitted to the Legislative Assembly. This draft text reflects the annual report 2005–06 of the Office of the Defender of Women in the National Office of the Defender of the Population, which indicated that although the Act to combat sexual harassment was intended to protect the interests of victims of harassment, its application has often had the opposite effect of restricting the rights of women as victims, giving rise to an exponential increase in sexual harassment. The draft text is the outcome of six months' work by the following institutions: the Office of the National Defender of the Population, through the Office of the Defender of Women; the University of Costa Rica, represented by the Centre for Women's Investigations and Studies (CIEM); the Technological Institute of Costa Rica, represented by the Gender Equality Bureau; the National Institute for Women, represented by the Gender Violence Unit; the Legislative Assembly (two deputies from the Special Standing Commission for Women and two technical advisers to the Technical Services Department of the Legislative Assembly); and the non-governmental organization "Feminist Network for Non-violence against Women", which examined the shortcomings of the current Act with a view to preparing a new draft text. The draft includes innovative amendments aimed at establishing accessible remedies, such as the explicit prohibition in examining evidence to consider the record of complainants, particularly in relation to the expression of their sexuality, so as not to further victimize complainants, and the limitation placed on conciliation in view of the inequality between the parties. It also provides for the intervention of the Ministry of Labour and the Office of the Defender, and provides that evidence shall be evaluated in accordance with the rules of sound judgement and, in the absence of direct evidence, reference shall be made to circumstantial evidence, along with other principles which emerged in the examination of problems in the application of the existing Act. *The Committee hopes that the Government will provide information on the adoption of this draft legislation and on its impact in practice.*

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

## Côte d'Ivoire

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1961)***

The Committee notes that for some years, section 14(2) of Act No. 92-570 of 1992 issuing general regulations for the public service allows 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.

## Croatia

### ***Workers with Family Responsibilities Convention, 1981 (No. 156)*** ***(ratification: 1991)***

*Article 3 of the Convention. National policy.* The Committee notes that the National Policy for the Promotion of Gender Equality (2006–10) adopted by the Croatian Parliament on 13 October 2006 refers to Croatia's obligations under the Convention, among other relevant United Nations and ILO instruments. The Committee notes with interest that the Policy sets out a number of specific measures promoting the sharing of family responsibilities between men and women and increasing the availability of childcare services as a means of achieving effective equality of opportunity and treatment between men and women workers. *The Committee requests the Government to include in its next report information on the implementation of the National Policy on the Promotion of Gender Equality, as it relates to the application of the Convention.*

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

## Czech Republic

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1993)***

1. *Legislative developments.* The Committee notes that under section 16(1) of the new Labour Code (Act No. 262/2006), the employer is required to ensure equal treatment of employees in respect of working conditions, remuneration, vocational training and career advancement. Section 16(2) provides that all forms of discrimination in labour relations shall be prohibited. For the purposes of the new Labour Code, the definitions of the different forms of

discrimination contained in the future Anti-Discrimination Act apply. According to the Government's report, the current draft Anti-Discrimination Act will cover direct and indirect discrimination based on race, ethnic background, nationality, sex, sexual orientation, age, health impairment, religion and belief.

2. However, the Committee recalls that section 1(4) of the previous Labour Code prohibited discrimination based on sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social background, family background, language, health condition, age, religion or confession, property, marital or family status, family responsibilities, political or other conviction, membership of or activity in political parties or movements, trade union or employers' organizations. The Committee notes with concern that the new Labour Code, in conjunction with the future Anti-Discrimination Act would appear to restrict considerably the protection from discrimination in employment and occupation available under the previous Labour Code, not even providing protection from discrimination on the basis of all the grounds contained in the Convention. ***The Committee therefore requests the Government to ensure that the legislation continues to provide a high level of protection against discrimination in employment and occupation on all the grounds listed in the Convention, i.e. race, colour, sex, religion, political opinion, national extraction or social origin, as well as the additional grounds previously covered, and to provide information on the specific steps taken to this end.***

3. In this context the Committee also notes the concerns expressed by the Czech-Moravian Confederation of Trade Unions according to which the draft Anti-Discrimination Act currently before Parliament did not provide for a strong involvement of the State in the protection against discrimination through its various inspections bodies. In the Committee's view, it is equally important that the future legislation allows individual victims of discrimination to bring complaints and obtain redress, and that it also permits the competent bodies and institutions to address discrimination and to promote equality in a proactive and coordinated manner. ***The Committee requests the Government to provide information on the following:***

- (a) ***the measures taken to make the new anti-discrimination legislation, once adopted, known among workers and employers, as well as the public officials and judges responsible for its enforcement;***
- (b) ***the measures taken to assist victims of discrimination, particularly the Roma, in bringing complaints concerning employment discrimination;***
- (c) ***the discrimination cases dealt with by the competent bodies, including the courts and the labour inspectorate, under the Labour Code, the Employment Act, as well as the future Anti-Discrimination Act according to the different grounds of discrimination (facts, rulings, remedies provided or sanctions imposed).***

4. ***The situation of the Roma in employment and occupation.*** The Committee notes that the Government undertook in 2006 an "analysis of socially excluded Roma neighbourhoods, and of the absorption capacity of entities operating in this field". The results of the analysis, which confirmed the existence of social exclusion of the Roma throughout the Czech Republic, are currently under evaluation. The Committee also notes that the Government plans to create a new agency to combat social exclusion and to prepare a comprehensive programme for the integration of the Roma. While the Committee notes that the Government's report contains an update on measures taken to promote the access of the Roma to education, the Committee regrets that no information has been provided with regard to the specific measures taken to promote the access of members of the Roma community to employment. ***The Committee, therefore, requests the Government to provide detailed information on the specific measures taken and results achieved in promoting equal access of Roma men and women to employment, including self-employment and employment in the public service. In this regard, the Government is requested to provide information on the relevant measures taken under the envisaged comprehensive programme for the integration of the Roma.***

5. The Committee remains concerned that the absence of data on the status of the Roma in employment and occupation may be a serious obstacle to assessing their situation and the impact of the programmes and schemes implemented to improve their situation. The Committee notes that under Act No. 101/2000 on the Protection of Personal Data, ethnic or racial origin is considered as "sensitive data" which can be collected and processed only under certain conditions, including with the consent of the individual concerned. The Government reiterates that the 2001 census data are the only official data currently available concerning the situation of the ethnic minorities, including the Roma. However, the Committee is aware that the usefulness of the 2001 census data concerning the Roma is questionable due to the significant discrepancy between the number of persons having identified themselves as Roma and the estimated size of the Roma population. ***The Committee requests the Government to take all measures necessary to explore options with regard to creating the conditions required for the collection of data on the situation of the Roma in employment and occupation, in accordance with the recognized principles of data protection and human rights.***

6. The Committee recalls its previous comments on the need to step up efforts to combat prejudices and discrimination against the members of the Roma community and to build trust between the Roma and other parts of the society. It notes that there are a number of initiatives and projects to promote multicultural awareness and anti-racism among students and teachers. ***The Committee requests the Government to continue to provide such information, as well as information on the measures taken or envisaged to promote racism-free workplaces, in cooperation with workers' and employers' organizations.***

7. ***Discrimination on the basis of political opinion.*** The Committee recalls that Act No. 451 of 1991 (Screening Act), which lays down certain political prerequisites for holding a range of jobs and occupations, mainly in the public

service, had been the subject of representations under article 24 of the ILO Constitution (in November 1991 and June 1994) and the Governing Body invited the Government to repeal or modify the provisions in the Screening Act that were incompatible with the Convention. Following the rejection by Parliament of a proposal to repeal the Act in 2003, the legislation remains in force unchanged, contrary to the Convention. The Committee is concerned that despite the time that has elapsed since the Governing Body's decision on this matter, this situation remains unresolved. In its report, the Government merely states that no changes had occurred during the reporting period. ***Noting from the Government's report that new legislation regulating civil service employment is being prepared, the Committee urges the Government to ensure, in this context, that the provisions of the Screening Act that are contrary to the Convention are modified or repealed, in accordance with the Governing Body's report.***

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

[The Government is asked to supply full particulars to the Conference at its 97th Session and to report in detail in 2008.]

## Dominican Republic

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)***

1. *Articles 1 and 2 of the Convention.* In its previous comments the Committee asked the Government to introduce the concept of equal pay for men and women workers for work of equal value, by amending section 194 of the Labour Code to ensure better application of the Convention. The Committee notes that the Tripartite Committee appointed by the Labour Advisory Council in July 2007 has drafted an amendment to section 194 of the Labour Code in order to bring it into line with the Convention. ***The Committee hopes that the amendment will incorporate the principle of the Convention in full and asks the Government to send a copy of the amendment once it has been adopted by the National Congress.***

2. The Committee notes that in its report, the Government again states that the ratio of women to men in top management positions and high-level offices is still three to one. The Committee notes, however, that the Government's statistics provide no information disaggregated by sex on the distribution of posts or the amounts received as remuneration. It also notes from the statistics supplied that women account for 50 per cent of the workforce in export processing zones and only 31 per cent in the country's production sectors. ***The Committee urges the Government in its next report to supply statistical information on the distribution of men and women in the various types of activity, broken down by occupational category and remuneration both in the export processing zones and in the country's production sectors. The Committee repeats its request for information on emoluments paid by employers in all branches of economic activity, focusing in particular on data for the export processing zones and the hotel industry.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

1. *Discrimination on grounds of colour, race and national extraction.* In its previous observation, the Committee examined a communication of 2005 from the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), according to which, between the end of July and mid-August of that year, 2,000 persons were detained by the police, the Dominican army or migration officials, and were deported to Haiti because of their colour or their inability to speak Spanish, and that during the deportation process they had no opportunity either to demonstrate that they were legal immigrants, or to recover their documents or contact the diplomatic authorities of their country, nor were they to allowed to claim payment of wages due. The Committee also noted the indication in the ICFTU's report that even some Dominican nationals were deported, as they were taken for Haitians. The Committee recalls that in June 2004 the Conference Committee on the Application of Standards noted the Government's determination to investigate the allegations made in the complaints and to improve the supervision of its laws against discrimination. The Committee nevertheless notes that in its latest report the Government does not provide information on the action taken for this purpose and confines itself to stating that there is no discrimination against Haitian citizens, whether they are legal or illegal. However, the Committee notes the report submitted by the United Nations Independent Expert on the situation of human rights in Haiti (E/CN.4/2006/115), according to which the forced repatriation of Haitians from the Dominican Republic occurs frequently in violation of the guarantees provided for under Dominican immigration legislation (Act No. 95 and Regulation No. 275) and the Agreement concluded between the two Governments in December 1999, and without taking into account the recommendations of the Inter-American Commission on Human Rights calling for each individual case to be heard by an independent judicial authority. In view of the above, the Committee welcomes the fact that the Government accepted the request of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to visit the country in October 2007 together with the Independent Expert on minority issues (Human Rights Council, A/HRC/4/19/Add.1). The Committee notes that the Independent Expert and the Special Rapporteur will present their findings and recommendations to a forthcoming session of the Human Rights Council. ***The Committee requests the Government to provide information on the measures adopted or envisaged to implement the recommendations relating to this visit with a view to preventing and eliminating***

*discrimination on grounds of race, colour and national extraction. The Committee urges the Government to adopt the necessary measures to ensure that full effect is given in practice to the principle of non-discrimination on grounds of race, colour and national extraction and to provide information in this respect. The Committee once again requests the Government to provide information on the progress achieved in clarifying the situation with regard to the cases of illegally deported Haitians and Dominicans referred to by the ICFTU and to provide the information requested in 2004 by the Committee on the Application of Standards.*

2. *Promoting and guaranteeing the application of the Convention in practice. Discrimination on the ground of sex.* The Committee recalls the ICFTU's communication indicating the persistence of cases of discrimination based on gender, including pregnancy testing and sexual harassment, as the authorities are not ensuring the effective application of the legislation that is in force. The Committee notes that, according to the Government's report, the labour inspection services and the Gender Department are continually calling for complaints to be lodged where there has been sexual harassment. The Committee also notes that 58,394 regular inspections were carried out by the Government during the course of 2006. The Committee notes the Government's indication that, despite the measures adopted to improve information to workers on their rights, the national inspection services and the labour courts have not received any complaints of sexual harassment. The Committee emphasizes that the absence of complaints is not necessarily an indication that sexual harassment does not take place. The Committee further expresses its continued concern with regard to pregnancy testing as a requirement to obtain or keep a job in export processing zones, and notes that the Government's report does not provide information on the measures taken in practice to prevent and eliminate these types of discriminatory practices against women. *The Committee requests the Government to take proactive measures to prevent, investigate and penalize sexual harassment and the requirement of pregnancy testing as a condition for obtaining or maintaining employment, in collaboration with employers' and workers' organizations, and to keep it informed in this respect. The Committee asks the Government to provide information on measures to support and protect victims of sexual harassment and pregnancy testing, education and training provided regarding sexual harassment and pregnancy testing including measures to assist labour inspectors to detect violations in this regard. Please also provide information on the intensification of supervisory activities in export processing zones and on whether such action has been taken in cooperation with employers' and workers' organizations. The Committee further requests the Government to continue providing information on any cases of sexual harassment reported by the labour inspectorate and on court rulings in relation to sexual harassment.*

3. *Application of the legislation. HIV testing.* In its previous comments, the Committee noted the information supplied by the ICFTU that men and women workers were required as a matter of course to undergo HIV testing, often against their will and in breach of the principle of confidentiality, in order to be hired or to keep their jobs. The Committee also noted the information indicating that the problem principally affects women workers in export processing zones and the tourist industry, and the allegations of the ICFTU that the authorities do not enforce the prohibition of such testing. *The Committee regrets that the Government has not provided information in this respect and, therefore, hopes that it will make every effort to provide information in its next report on the following points: (a) the measures adopted to guarantee the confidentiality of complaints made relating to violations of the prohibition of HIV testing; (b) the measures adopted to protect workers who lodge complaints; (c) the measures that ensure the enforcement of the prohibition by labour inspectors; (d) information, awareness-raising and training activities on subjects relating to the problem, particularly for officials and employees in the labour inspectorate and their impact in practice; and (e) complaints or charges that are made for violations of this prohibition and, where appropriate, the outcome of the cases, accompanied by the related administrative or court decisions.*

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

## Ethiopia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observations, which read as follows:

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). Recalling its previous observations on this matter, the Committee notes the communication from the Government dated 11 May 2005 by which it forwarded extracts of the Partial Awards of 17 December 2004 made by the Ethiopia Eritrea Claims Commission set up under the terms of the 2000 Algiers Agreement between the two countries. The Committee notes that these awards deal with liability concerning the claims submitted by Ethiopia and Eritrea and that the proceedings of the Commission are now at the phase of determining damages. *The Committee requests the Government to provide information in its next report on any further decisions reached by the 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, in accordance with Conventions Nos 111 and 158, and to grant appropriate relief.*

*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.

## Fiji

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 2002)**

1. *Legislative developments.* The Committee notes that section 6(2) of the Employment Relations Promulgation 2007 published in the government *Gazette* on 2 October 2007 provides that “every employer shall pay male and female workers equal remuneration for work of equal value”. Part 9 of the Promulgation (“Equal Employment Opportunities”) contains further provisions with a view to “ensuring equal rates of remuneration for work of equal value” (section 74). Section 78 (“unlawful discrimination in rates of remuneration”) provides that “an employer must not refuse or omit to offer or afford a person the same rates of remuneration as are made for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description for any reason including the gender of that person”.

2. The Committee recalls its 2006 general observation in which it made it clear 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 notes that the level of qualification, for instance the length of relevant experience or the level of a degree, may be used as an objective factor to determine remuneration for a particular occupation, but it may not be used to restrict the comparison of remuneration to men and women holding qualifications in the same or similar profession or occupation, which appears to be the effect of section 78 of the Employment Relations Promulgation. Further, comparing work performed by men and women under “the same or similar circumstances” may unduly limit the scope of comparison of remuneration received by men and women, since jobs might involve different “circumstances”, but may nevertheless be of equal value. ***The Committee asks the Government to amend section 78 of the Employment Relations Promulgation to bring it into conformity with the Convention and to provide information on the measures taken in this regard. It also asks the Government to provide information on any case or dispute concerning equal remuneration for men and women for work of equal value decided by the competent authorities under section 6(2) or part 9 of the Promulgation.***

3. The Committee also notes that section 79 of the Employment Relations Promulgation provides for criteria to be applied to ensure equal pay when determining remuneration in collective agreements. Section 80(1) provides that “if an instrument in force at the commencement of this law: (a) provides separate provisions for remuneration of workers based on gender of workers; or (b) provides for the remuneration of female workers only, the parties must, within 12 months of the coming into force of this law review the instrument to implement equal pay” by determining the classifications of the work performed by the female workers in relation to the work performed by male workers and the rates of remuneration that would represent equal pay for each such classification. Section 80(2) and (3) allows for applications to be made to the Employment Relations Tribunal (within 12 months) where section 80(1) is not complied with. ***The Committee asks the Government to provide detailed information on the implementation in practice of sections 79 and 80 of the Employment Relations Promulgation, including information on any applications made to the Employment Relations Tribunal to obtain equal pay determinations or amendments to collective agreements.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)**

1. *Legislative developments. Prohibition of discrimination.* The Committee notes with interest that the Employment Relations Promulgation 2007, published in the Government *Gazette* on 2 October 2007 contains a number of provisions applying the Convention. The Committee notes in particular section 6(2) which provides that:

... [n]o person shall discriminate against any worker or prospective worker on the grounds of ethnicity, colour, gender, religion, political opinion, national extraction, sexual orientation, age, social origin, marital status, pregnancy, family responsibilities, state of health including real or perceived HIV status, trade union membership or activity, or disability in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.

The Committee also notes that Part 9 (“Equal Employment Opportunities”), section 75, of the Promulgation states that:

... for the purpose of this Part the prohibited grounds for discrimination whether direct or indirect are actual or supposed personal characteristics or circumstances, including: ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age, disability, HIV/AIDS status, social class, marital status (including living in a relationship in the nature of a marriage), employment status, family status, opinion, religion or belief.

2. The Committee welcomes the fact that the Promulgation explicitly prohibits direct and indirect discrimination in employment and occupation and that it covers the prohibited grounds explicitly listed in *Article 1(1)(a) of the Convention*, as well as a number of additional grounds, as envisaged under *Article 1(1)(b)*. ***The Committee requests the Government to provide information in its future reports on the implementation of the discrimination and equal opportunities provisions of the Employment Relations Promulgation 2007, including information on the measures taken by the competent authorities to monitor and enforce these provisions, and on relevant cases or disputes brought before the competent bodies. The Committee encourages the Government to undertake training and awareness-raising activities***

*on equal employment opportunities and the related legal provisions and to indicate any such measures taken in this regard.*

3. *Sexual harassment.* The Committee notes with interest that the Employment Relations Promulgation 2007, requires employers to develop and maintain a policy to prevent sexual harassment in the workplace, consistent with the national policy guidelines for preventing sexual harassment developed by the Employment Relations Advisory Board. The Committee notes that the Promulgation addresses sexual harassment by the employer or its representative, as well as by co-workers and that it covers both quid pro quo and hostile environment harassment. ***The Committee requests the Government to provide information on the progress made with regard to the adoption and implementation of sexual harassment policies at the enterprise level, to provide a copy of the national policy guidelines on the prevention of sexual harassment envisaged under the Employment Relations Promulgation, and to provide information on any cases or disputes concerning sexual harassment brought before the competent bodies.***

4. *Discrimination based on HIV/AIDS status.* In addition to the abovementioned prohibition of discrimination on the basis of real or perceived HIV/AIDS status, the Committee notes with interest the adoption of the 2007 National Code of Practice for HIV/AIDS in the Workplace, which, inter alia, provides important guidance on how to address discrimination based on HIV/AIDS status. ***The Committee requests the Government to provide information in its future reports on the measures taken or envisaged to promote equal employment opportunities for men and women living with HIV/AIDS and on the implementation of the National Code of Practice and the relevant provisions of the Employment Relations Promulgation.***

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

## Finland

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1983)**

1. *Article 3 of the Convention. National policy.* Recalling that a major objective of the Convention is the achievement of effective equality of opportunity and treatment for men and women and that the Workers with Family Responsibilities Recommendation, 1981 (No. 165), encourages the sharing of family responsibilities between men and women, the Committee notes that promoting men's engagement in parenting and caring for children is an integral aspect of the Finnish gender equality policy. However, the Committee notes that according to the Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK) and the Confederation of Unions for Academic Professionals in Finland (AKAVA), younger women are disadvantaged in the labour market because they take family leave more often than men.

2. The Government, in cooperation with social partners, carried out a paternity leave campaign in 2002–03 to disseminate information about the extended paternity leave available since 2003 and to encourage the use of family leave by men. According to information released by the Ministry of Social Affairs and Health, by the end of 2006, fathers in Finland made use of fewer than four per cent of parental leave days, and according to a 2005 study published by the Social Insurance Institute, paternity leave tended to be taken by men with higher incomes. The Committee notes that legislative amendments made during the reporting period introduced incentives for men to take family leave, inter alia, by linking extended paternity leave to the taking of a minimum period of parental leave and increasing the allowance paid during family leave periods. The Committee also notes that additional legislative measures are being discussed with a view to giving more support for the involvement of men in family matters (Men and Gender Equality Policy in Finland, Ministry of Social Affairs and Health, 2007:2). ***The Committee requests the Government to continue to provide information on the measures taken to promote a sharing of family responsibilities between men and women, and to provide statistical information on the extent to which men take family leave.***

3. *Articles 7 and 8. Return to work following family leave and protection from dismissal.* The Committee notes that SAK, STTK and AKAVA indicate that despite the fact that employees taking childcare leave, in principle, enjoy increased protection from termination, the employer can rearrange the work and hire new employees so that there is no longer work available for the person returning from family leave, thus making his or her dismissal possible. The Commission for Local Authority Employers (KT) stated that rapid changes in working life may render dismissal inevitable, for instance in cases where a reorganization of work takes place during extended periods of family leave and the previous job or similar work cannot be offered in accordance with the employment contract.

4. The Committee notes that section 9 of Chapter 4 of the Employment Contract Act provides that at the end of a period of family leave, employees are in the first place entitled to return to their former duties. If this is not possible, employees shall be offered equivalent work in accordance with the employment contract, and if this is not possible either, other work shall be offered in accordance with their employment contract. Section 9 of Chapter 7 provides that the employer shall not terminate an employment contract on the basis of the employee's pregnancy or because the employee is exercising his or her right to family leave. However, it appears that this provision is primarily concerned with dismissal during a family leave period, rather than dismissals upon return. ***The Committee requests the Government to clarify whether and how the legislation protects employees returning from family leave from termination in situations such as***

described by SAK, STTK and AKAVA and to provide information on any assessments made of the practical application and effects of the provisions concerned on the ability of workers returning from family leave to remain integrated in the labour force. In this regard, the Committee requests the Government to provide information on any relevant court decisions.

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

## France

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)**

The Committee notes with interest the adoption of the Act of 23 March 2006 on equal pay for men and women, which lays down the objective of eliminating wage differentials between men and women by 30 December 2010. The Committee further notes that the Act requires occupational sectors and enterprises to undertake negotiations every year to define and schedule measures to eliminate wage differentials between men and women. It also contains provisions aimed at reconciling professional and family life in order to tackle the structural difficulties that stand in the way of equality between men and women in employment and occupation. It also provides for a mid-term evaluation with close participation by the High Council on Occupational Gender Equality. *The Committee welcomes this initiative and asks the Government to send information on the impact of the Equal Pay Act in reducing inequalities in the remuneration of men and women and to send a copy of the mid-term evaluation.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)**

1. *Discrimination on the basis of race and national extraction.* In its previous comments, the Committee noted that, despite the abundance of laws and administrative and advisory bodies and a better understanding of the problems, the results achieved in combating discrimination on the basis of race and national extraction in respect of employment and occupation were disappointing, and that discrimination on these grounds was still increasing. The Committee also noted that action was rarely brought by victims of discrimination, who were largely from a non-European immigrant background, and who were still having serious difficulties in asserting their rights.

2. The Committee notes the steps taken by the Government to combat discrimination in employment and occupation on the basis of race, national extraction and ethnic origin. In this respect, the Committee notes the measures taken, in the context of the agreement concluded between the Service for Women's Rights and Equality (SDFE), the Department of Population and Migration Studies and the Integration and Anti-Discrimination Assistance and Support Fund (FASILD), to promote the integration of immigrant women and women from an immigrant background in employment and vocational training, and to promote diversity and gender balance in enterprises. The Committee also notes that a national survey of discrimination was carried out in France from late 2005 to mid-2006 under the auspices of the International Labour Office (ILO) and the Department for the Promotion of Research and Statistical Studies (DARES). The aim of this survey was to help the Government and the social partners to verify the existence and the extent of discrimination in recruitment towards young French men and women on account of their origins, and to provide guidelines for and implement effective solutions. The Committee also notes that the Government agreed to the visit in September 2007 of the United Nations Independent Expert on minority issues, Ms Gay McDougall, and that the expert would present a full report on her mission in France to the United Nations Human Rights Council in 2008. The Committee emphasizes the conclusion reached by the ILO/DARES national survey that, in cases where employers made a choice between two candidates having comparable training, professional experience, style of dress and verbal expression, nearly four times out of five the candidate with a name of French origin was chosen, to the detriment of the candidate of Black African or Maghreb origin. The survey also shows that nearly nine-tenths of all cases of discrimination were seen to occur even before employers took the trouble to invite both candidates for interview.

3. The Committee notes the initiatives taken by the Government to prevent and combat discrimination on the basis of race, national extraction or ethnic origin. However, the Committee regrets, in view of the gravity of the situation, that the Government has not supplied more detailed information on all the activities taken to promote and enforce equality of access to employment and training irrespective of race, national extraction or ethnic origin, and on the impact of those activities. *The Committee urges the Government to supply full information in its next report on the following: (a) the activities of the High Authority to Combat Discrimination for eliminating discrimination in practice on the basis of race, national extraction or ethnic origin; (b) the impact of the Diversity Charter of 2004 and the EQUAL programme on the promotion of diversity in enterprises; (c) any other measures adopted or envisaged, with the participation of the social partners, to stop discriminatory practices, and to promote in particular access to employment and training for qualified young persons from an immigrant background; and (d) any measures designed to promote tolerance, including campaigns to raise awareness and provide information on existing legislation concerning discrimination. The Committee also asks the Government to provide information on action taken further to the survey conducted by the ILO, including strategies for eliminating discrimination in the context of recruitment.*

4. *Discrimination on the basis of religion.* The Committee refers once again to its previous comments on the prohibition imposed by Act No. 65 of 17 March 2004 and its implementing circular of 18 May 2004 on the wearing in public schools of any conspicuous religious signs or apparel on pain of disciplinary measures including expulsion. The Committee was concerned that in practice this Act might result in some children, particularly girls, being kept away from public schools for reasons associated with their religious convictions, thereby reducing their capacity for finding employment, contrary to the Convention. The Committee notes that the Government's report does not provide any information on this point and once again reminds the Government of the importance of ensuring that the application of this Act does not have the effect of reducing girls' capacity for finding employment in the future, which would be contrary to the principle of non-discrimination on religious grounds. ***The Committee urges the Government to supply information on the application of Act No. 65 of 17 March 2004 and its implementing circular of 18 May 2004, especially with regard to the following: (a) any court ruling or administrative decision concerning the application of the abovementioned legislation; (b) the respective numbers of boys and girls who have been expelled from school on the basis of the Act; and (c) the measures taken to ensure that the pupils who have been expelled nonetheless have adequate opportunities to acquire education and training.***

5. *Article 24 of the Constitution of the ILO. Follow-up of a representation.* The Committee notes that at its 300th Session (November 2007), the Governing Body adopted the recommendations of the tripartite committee established to examine the representation alleging non-observance by France of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Termination of Employment Convention, 1982 (No. 158), made under article 24 of the Constitution of the ILO by the Confédération générale du travail – Force ouvrière. These recommendations entrusted the Committee of Experts with following up the questions raised in the report of the tripartite committee (GB.300/20/6). With regard to Convention No. 111, the tripartite committee noted that Ordinance No. 2005-893 provides that the conditions of implementation of the “contract of new employment” (CNE) and its effects on employment will, by 31 December 2008, be assessed by a committee made up of representative employers' and workers' organizations. It considered it essential that this review also include an assessment of whether the measures have resulted in any direct or indirect discrimination against young workers, taking into account the effects of multiple discrimination based on age and the grounds referred to in *Article 1(1)(a) of the Convention*, especially sex, race, colour and national extraction. ***The Committee, therefore, asks the Government to provide information on the outcomes of the abovementioned assessment of the measures concerned on the employment of young workers, taking into account the effects of multiple discrimination based on age, sex, race, colour and national extraction.***

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

### ***Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1989)***

1. *Legislative developments.* The Committee notes with interest the numerous measures taken by the Government to promote equality of opportunity and treatment for workers with family responsibilities. It notes in particular that section 87 of Act No. 2005-1579 introduced parental leave and a corresponding allowance and that the Act on the Financing of Social Security for 2007 established “family support” leave. The Committee also notes with interest the adoption of the Act of 23 March 2006 on Equal Pay for Men and Women. The Act requires that enterprises show the measures they have taken to promote the reconciliation of professional life and family life in the annual status report comparing general conditions of employment and training. Enterprises are also required to negotiate the working and employment conditions of part-time employees. The Committee further notes that the Act provides for financial assistance or relief for enterprises that take measures in favour of workers with family responsibilities, and consolidates employees' entitlements to parental leave and training. ***The Committee requests the Government to provide information on the application of these measures and their impact in improving the conditions of work and training of workers with family responsibilities, including part-time workers.***

2. *Article 5 of the Convention. Childcare services.* In its previous comments the Committee took note of observations by the French Democratic Confederation of Labour (CFDT) submitting that, as part of the process to combat discrimination, it is necessary to ensure that both parents have access to appropriate childcare facilities. The Committee notes that with respect to the early childhood benefit (PAJE), several measures have been implemented to promote care, maintenance and education for infants. In particular, the PAJE provides for a wider choice of childcare facilities so that parents wishing to carry on an occupational activity have a real choice of childcare. Furthermore, the introduction of the PAJE was accompanied by the launching of a plan to increase the number of places available in nurseries for children, by measures to increase the number of childminders and by a tax credit for enterprises that incur expenditure on childcare for their employees. ***The Committee requests the Government to continue to provide information on the measures taken to improve and increase childcare services and on the impact of these measures in terms of reconciling economic activity and family life.***

3. *Articles 4 and 7. Social security and training.* In previous comments, the Committee took note of observations by the French Confederation of Christian Workers (CFTC) on the need for the parental education allowance to be accompanied by guarantees in terms of career development and continuity of social protection. The Committee notes from

the Government's report that as from July 2006, the new parental education leave grant to parents wishing to reduce or stop their economic activity, amounted to 50 per cent more than the former parental education allowance. The Committee also notes that the Act on Equal Pay for Men and Women extends the scope of eligible expenditure for family tax credit to enterprises' expenditure on training for employees hired following their resignation from or termination of service during parental education leave. It also provides that periods of absence taken for parental education leave shall be counted in calculating entitlements in respect of the individual's right to training. ***The Committee requests the Government to indicate the extent to which the parental education right is used and to provide information on the number of beneficiaries of this right who have undertaken occupational training during or after the leave. The Committee reiterates its request for information on the measures taken to ensure continuity of social protection for these workers during the parental education leave.***

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

## Greece

### ***Workers with Family Responsibilities Convention, 1981 (No. 156)*** ***(ratification: 1988)***

1. *Articles 3 and 4 of the Convention. Leave entitlements for men and women workers with family responsibilities.* The Committee notes with interest that the new Civil Servants Code (Act No. 3528/2007) adopted by Parliament on 24 January 2007 strengthens the previously existing measures to assist civil servants to reconcile work and family responsibilities. Most importantly, the right to childcare leave – either in the form of reduced daily hours of work or a nine-month period of paid leave of absence – has been extended to fathers, albeit only if the entitlement is not used by the mother (section 53(2)). However, the Committee also notes that male civil servants cannot make use of this entitlement if his spouse is not working, except in cases where the spouse is not in a position to care for the child due to a serious disability (section 53(3)(3)). Further, the three-month paid leave in the case of adoptions is only available to women (section 52(4)). As noted in its previous comments, Act No. 2527/1997 appears to exclude male public sector employees from paid adoption leave. The Committee considers that these provisions are not in conformity with the principle of equal treatment and that under the Convention measures taken in favour of workers with family responsibilities must be made available to men and women equally. ***The Committee requests the Government to:***

- (a) provide information on the implementation of the provisions of the 2007 Civil Servants' Code on childcare leave and other entitlements intended to facilitate reconciliation of work and family responsibilities;***
- (b) indicate the provisions governing entitlements intended to facilitate reconciliation of work and family for civil servants not covered by the Civil Servants Code;***
- (c) indicate the measures taken to ensure that such entitlements are available to men and women civil servants and public sector employees, on an equal footing; and***
- (d) provide statistical information on the extent to which men and women workers make use of family related leave entitlements (private and public sectors).***

2. *Social security.* While welcoming the progress made in extending paid parental leave in the civil service, the Committee also notes that parental leave in the private sector is unpaid. The Committee recalls that pursuant to section 6 of Act No. 1483, parents are covered by social security while they are on parental leave, provided they pay the employer's contribution as well as their own contributions. In this regard the Committee notes that article 7 of the National General Collective Labour Agreement 2006–07 commits the parties to promote a legislative regulation providing for cash payments to male and female employees on childcare leave, and payment of social insurance contributions (CEDAW/C/GRC/Q/6/Add.1, 10 October 2006, page 24). ***The Committee requests the Government to provide information on any further developments in this regard.***

3. *Article 11. Workers' and employers' organizations.* The Committee notes that in June 2006 the General Secretariat for Gender Equality and major employers' organizations signed a Protocol of Cooperation for the promotion of equal opportunities for men and women in enterprises which, inter alia, provides for a special programme for the operation of nurseries and the promotion of flexible forms of work organization open to men and women in small and medium-sized enterprises. The Committee welcomes the employers' organizations' commitment to study the use of flexible forms of work organization with a view to reconciling family and professional life. ***The Committee requests the Government to provide information on the measures taken to promote the establishment of childcare facilities and services and the use of flexible forms of work organization under the 2006 Protocol of Cooperation, including information on results achieved.***

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

## Grenada

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1994)**

1. *Articles 1 and 2 of the Convention. Legislative developments.* Recalling its previous comments concerning the differential wage rates for female and male agricultural workers provided for under the Minimum Wage Order SRO 11 (2002), the Committee notes that both the Grenada Employers' Federation and the Grenada Trade Union Council agreed with the Committee's comments and that the Department of Labour proposed an amendment to provide for the same wage rate for male and female agricultural workers. ***The Committee asks the Government to ensure that the Minimum Wage Order no longer specifically refers to "male workers" and "female workers" and that all designations for workers in the different occupations are gender-neutral. The Committee asks the Government to supply a copy of the revised 2002 Minimum Wage Order, as soon as it is adopted. The Committee also asks the Government to 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.***

2. *Public sector.* The Committee notes that the Government has not yet replied to the Committee's repeated requests for information on how remuneration is determined for persons working in the public sector. ***It asks the Government to provide this information in its next report, including information on how the principle of the Convention is taken into consideration in this context.***

3. *Collective agreements.* The Committee notes the examples of collective agreements provided by the Government, many of which contain specific clauses providing for equal pay for men and women, in accordance with job grades and classifications. ***The Committee asks the Government to indicate how it is ensuring that the principle of the Convention is included in public sector collective agreements and promoted in private sector collective agreements. Please also provide information on measures taken to ensure job classifications and the grade structure are established in accordance with the principle of equal remuneration for work of equal value, including through the use of objective job evaluation.***

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

## Guatemala

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1961)**

*Article 1 of the Convention. Equal remuneration for work of equal value. Legislative measures.* With regard to the adoption of measures to give legislative expression to the principle of equal remuneration for men and women for work of equal value, the Committee notes that, according to the Government's report, the work of the Legal Reforms Subcommittee has been unable to progress, due to the new formation of the Tripartite Commission on International Labour Affairs in October 2006 and the failure of one of the sectors to indicate the names of representatives in due time. The Committee notes that meetings have just begun and that technical and legal analyses of the reforms suggested by the Committee of Experts are being carried out. The Committee draws the Government's attention to its 2006 general observation on the Convention, paragraph 3 of which states that "'Work of equal value' includes but goes beyond equal remuneration for "equal", the "same" or "similar" work and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value". Paragraph 6 goes on to state: "Noting that several countries still retain legal provisions that are narrower than the principle as laid down in the Convention, as they do not give expression to the concept of 'work of equal value', and that such provisions hinder progress in eradicating gender-based pay discrimination against women at work, the Committee urges the governments of those countries to take the necessary steps to amend their legislation. Such legislation should not only provide for equal remuneration for equal, the same or similar work, but also prohibit pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value." ***The Committee therefore urges the Government to redouble its efforts to give legislative expression to the principle set forth in the Convention and to keep it informed in this respect.***

The Committee is also addressing a request directly to the Government.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)**

1. The Committee notes the communication from the Trade Union of Civil Aviation Workers (USTAC), received on 18 September 2006, alleging discrimination based on pregnancy against workers recruited under heading 29 of the national budget and the Government's reply, dated 4 December 2006. It also notes a communication from the Guatemalan Trade Union Movement and indigenous and peasant farmers' organizations listing 14 trade unions, federations and confederations participating in the communication, received on 27 August 2007. The communication alleges discrimination in the case of the "Faith and Joy" Association and also in the "heading 29" case referred to above.

2. *Discrimination based on pregnancy: pregnancy testing and dismissals.* In its previous comments, the Committee referred to communications from the Trade Union Confederation of Guatemala (UNSI TRAGUA) and the International Confederation of Free Trade Unions (ICFTU, now International Trade Union Confederation (ITUC)), concerning the administration of pregnancy tests and dismissal on the ground of pregnancy, especially in export processing enterprises

(*maquiladoras*). The Committee notes that, according to the report, the labour inspectorate has not received any complaints relating to the imposition of pregnancy tests as a condition for obtaining or keeping a job. The Government refers to a study entitled “Analysis of gender-based discrimination against women at work, especially in the textile and export processing industries” conducted in the context of the *Cumple y gana* (Apply and win) programme, with the collaboration of the State Department of the United States. According to this analysis, no pregnancy testing has been reported in clothing and textile enterprises but there is still a high percentage of dismissals among pregnant workers which employers claim to be based on other grounds. The Committee recalls, as it has done on other occasions, 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, and the various communications and the study referred to by the Government indicate that there are problems in this respect. ***The Committee requests the Government to renew 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 so that dismissals due to pregnancy which are suggested to be on other grounds cannot occur, and to keep it informed in this respect.***

3. *Social partners*. The Committee notes the activities of the Department for the Promotion of Working Women, including raising awareness of the prohibition on imposing pregnancy tests on workers, and that this work is being carried out in conjunction with the trade unions and will also be done with the employers. ***The Committee invites the Government to take effective steps in consultation with the social partners to eliminate all forms of discrimination on the ground of pregnancy and to keep it informed in this respect.***

4. *Communication from the USTAC*. In its communication, the USTAC alleges that contracts drawn up pursuant to “heading 29” constitute a form of modern exploitation, since instead of being paid wages or salaries, workers receive monthly fees through a contract which is nearly always for one actual year of work, without any type of social security coverage. It indicates that this type of hiring has made it possible to dismiss pregnant women and make illegal arrangements whereby they are requested to leave their employment at the enterprise while they give birth, to be hired again subsequently. During the intervening period they receive no income and are not covered in terms of social security or medical expenses. In other cases, women workers have been told that if they become pregnant they will be dismissed. The USTAC states that the authorities do not observe the rehiring orders issued by the Labour Inspectorate and that this violation of dignified and decent work occurs not only in the Department of Civil Aviation but throughout the public service. It notes the Government’s statement, in its reply to the communication, that the State of Guatemala concludes administrative contracts with individuals for technical or professional services under “heading 29”, which includes fees for technical or professional services provided by employees without tenure assigned to the service of an executive unit of the State. The Government emphasizes that persons hired under this heading are not employees of the State or public servants since they receive fees, not salaries. It states that some of the women whose contracts were terminated by mutual agreement were rehired and that in other cases the workers’ contracts were terminated on grounds that were unconnected with pregnancy.

5. The Committee cannot ignore the communications referred to in paragraph 2 of this observation, alleging discrimination on the ground of pregnancy, or the analysis referred to by the Government, according to which some sectors contain a high percentage of pregnant women who are dismissed allegedly on grounds other than pregnancy. This information suggests that the problem of dismissals based on pregnancy is part of a wider problem which calls for vigorous structural measures to tackle it. With regard to the case about which the USTAC makes its allegations, it is the State itself which terminates the contracts of pregnant women. ***Emphasizing the fact that dismissal on the ground of pregnancy constitutes sex-based discrimination, the Committee requests the Government to take all possible steps to ensure that “heading 29” is not used in such a way that women hired under it are discriminated against due to pregnancy, and to keep it informed in this respect. The Committee requests the Government to adopt vigorous measures in this respect since, given that the public sector is concerned, the employer is the State, which has the obligation and the possibility of applying the Convention directly, and to keep it informed in this respect.***

6. The Committee notes the numerous activities carried out by various Government bodies to promote the participation and education of women, especially the Department for the Promotion of Working Women, including coordination with the export processing industry dispute prevention body to raise awareness of labour rights in that sector. ***The Committee requests the Government to continue providing information in this respect.***

7. *Discrimination based on race. Indigenous peoples*. The Committee notes that the Vice-Presidency of the Republic of Guatemala conducted an “Analysis of Discrimination and Racism in Guatemala”, published in 2006, containing a study of the type of public policies needed for eliminating the mechanisms of racism and discrimination prevailing in the country. It notes that, according to the report, such mechanisms play an important role in the severe impact of socio-economic inequalities on indigenous peoples. ***Noting that the five-volume analysis was not attached to the report, the Committee requests the Government to send a copy and to keep it informed of the follow-up measures taken as a result of the analysis.***

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

## Guinea

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)**

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

*Article 1 of the Convention. Recalling its 2002 observation, the Committee once again expresses the hope that the Government will amend 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). The Committee recalls 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 hopes that the Government will make every effort to take the necessary action in the very near future. The Committee requests the Government to keep it informed of any progress made 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 that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

1. *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.*

2. *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 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.

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1975)**

1. 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.

2. 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 matters in a request addressed directly to the Government.

## Honduras

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)***

*Article 1 of the Convention. Work of equal value.* In its previous comments, the Committee pointed out that section 44 of the Equal Opportunities for Women Act (LIOM), does not adequately apply the principle of the Convention. The Committee reminds the Government that the principle of equal pay for equal work laid down by section 44 does not ensure sufficient protection against all forms of gender-based pay discrimination. The Committee recalls that discrimination can exist in cases where women are concentrated in certain sectors of activity in which the work is poorly paid in relation to its value. Hence the Convention establishes a wider principle than that of section 44, with the aim of ensuring that women who perform work which differs from that of men but is of equal value, according to objective evaluation criteria such as responsibilities, qualifications, skills or conditions of work, receive the same remuneration. The Committee draws the Government's attention to its general observation of 2006, which points out that "Noting that several countries still retain legal provisions that are narrower than the principle as laid down in the Convention, as they do not give expression to the concept of 'work of equal value', and that such provisions hinder progress in eradicating gender-based pay discrimination against women at work, the Committee urges the governments of those countries to take the necessary steps to amend their legislation. Such legislation should not only provide for equal remuneration for equal, the same or similar work, but also prohibit pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value." (paragraph 6). ***Noting that the Government's report does not provide any information on the revision of section 44 and merely states that the reform of the Equal Opportunities Act is still under discussion, the Committee asks the Government once again to bring its legislation fully into conformity with the principle of equal remuneration for work of equal value and asks it to supply detailed information in its next report on progress made on the revision of section 44 of the Equal Opportunities for Women Act.***

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

## India

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)***

1. *Assessment of the gender pay gap.* The Committee notes the statistical information provided by the Government concerning the average daily earnings of men and women in the service sector, the plantation industries and the tea-processing industry. The Committee notes that considerable gender pay differentials exist in a number of occupations in the service sector, mostly in favour of men. In the plantation industries (tea, rubber and coffee), women's average daily earnings are consistently lower than men's. In tea processing, there is a mixed picture as regards the earnings of women as compared to men performing the same occupation. In two occupations within this sector there is a considerable pay

differential: while female tea blenders earn only 71 per cent of the male wage per day, female withering loft attendants earn 30 per cent more than their male counterparts. The Committee notes that this may indicate that earnings continue to a certain extent to be determined on the basis of whether a man or a woman performs the job. ***The Committee asks the Government to continue to provide detailed statistical information on the earnings of men and women, for the widest possible number of sectors, industries and occupations. The Committee also asks the Government to provide data on the earnings of men and women according to educational level. Please also provide information on measures taken to reduce the gender wage gap, and the results thereof.***

2. ***Equal remuneration legislation.*** The Committee recalls its previous comments concerning the narrow 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 hopes that the Government will make every effort to ensure that any future revision of the equal pay legislation will include a provision that goes beyond a reference to the “same” or “similar” work, choosing instead the “value” of the work as a point of comparison. In this regard the Committee notes that the Government no longer plans to merge the Minimum Wages Act, 1948, the Payment of Wages Act, and the Equal Remuneration Act, 1976, which would have provided an opportunity to bring the equal pay legislation in line with the Convention. ***Recalling its general observation of 2006, in which it stressed that the concept of “work of equal value” goes beyond similar work and encompasses work that is of an entirely different nature, which is nevertheless of equal value, the Committee asks the Government to provide information on the measures taken to bring the Equal Remuneration Act into conformity with the Convention.***

3. ***Enforcement.*** The Committee notes the information provided concerning the enforcement of the Equal Remuneration Act, 1976, in respect of establishments under the sphere of central Government during 2005–06. The Committee welcomes the efforts made by the Government to draw the attention of the State authorities to the need for more effective implementation of the Act and to seek related information from them. The Committee notes that the information provided by the state authorities is of a general nature and does not indicate the number, nature and outcomes of equal pay cases handled by the authorities. ***The Committee asks the Government to continue to provide detailed information on the enforcement of the Equal Remuneration Act by the central authorities, and to seek and provide such information also in respect of the states and territories. Noting that the report does not provide information on important equal pay cases decided by the courts, the Committee reiterates its request to the Government to supply such information in its next report.***

4. ***Objective job evaluation.*** The Committee recalls that, according to the Centre of Indian Trade Unions (CITU) work traditionally done by women, such as weeding and transplanting in the agricultural sector, is often classified as “light work” which does not correspond with the real nature of the tasks involved. In this regard, the Committee stressed the need to promote the development and use of job classifications established on the basis of the work actually performed, using objective criteria unrelated to the worker’s sex and free from gender bias. It also stressed that the principle of equal remuneration for men and women for work of equal value does not require only the abolition of separate wage rates for men and women but also the elimination of sex-discriminatory job classifications. ***Noting that no information has been provided in reply to these comments, the Committee asks the Government once again to indicate the measures taken to promote the use of objective job evaluation methods as a means to determine wage rates irrespective of the worker’s sex.***

5. ***Cooperation with workers’ and employers’ organizations.*** The Committee notes the Government’s indication that the report form concerning the Convention had been forwarded to all central organizations of workers and employers but notes that none of them gave specific comments concerning the Convention. The Committee asks the Government to indicate whether it has brought the Committee’s comments to the attention of these organizations, including the specific proposals made by the CITU in its communication of 24 August 2005. These were as follows: (1) special units in the labour department could be formed to monitor discrimination on the ground of sex in respect of wages, classification and promotion; (2) female labour officers should be involved systematically in the hearing and deciding of equal pay complaints; (3) trade unions should be authorized to lodge complaints under section 12 of the Equal Remuneration Act. ***The Committee asks the Government to continue to seek the cooperation of workers’ and employers’ organizations with a view to giving full effect to the Convention, to provide them with the present comments, and to indicate the outcomes of any consultations held on these matters, including the proposals made by the CITU.***

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)***

1. The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2007, the resulting conclusions of the Conference Committee, as well as the Government’s report. The Committee notes that the Conference Committee urged the Government to take continuing, decisive and effective action to promote and ensure equal treatment and equal opportunities. It also stressed the need to ensure strict enforcement of the relevant legislation and full implementation of programmes to promote equal opportunities of Dalits and women in respect of access to education, training and employment. It requested the Government to intensify the awareness-raising campaigns on the unacceptability of those forms of discrimination. The Conference Committee also requested the Government to implement urgently a new “Time-bound Programme” to bring to an end to the inhuman practice of manual

scavenging which is carried out by the Dalit. Finally, the Committee notes that the Conference Committee emphasized the need to assess at regular intervals the impact of the action taken to eliminate discrimination against women and Dalits and that it requested the Government to provide to the Committee of Experts information on the results achieved by such action, including detailed statistical data.

2. The Committee notes that the Government's report contains no information concerning the matters raised by Hind Mazdoor Sabha in their communication dated 29 August 2006. The union stated that protection under article 14 (equality before the law) and article 15 (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) of the Constitution did not cover private employees. In addition, widespread discrimination against Dalits, Adivasis and women in the construction and fishing industries, as well as in agriculture, was alleged. The Committee notes that the Government indicated during the discussion in the Conference Committee that information was being sought from relevant sources concerning these matters. ***While noting the information provided concerning the fishing sector, the Committee requests the Government to provide information on all the matters raised by Hind Mazdoor Sabha, including on the issue of whether private sector employees enjoy legal protection from discrimination in employment and occupation.***

#### ***Discrimination based on social origin***

3. The Committee notes that the information provided by the Government concerning the measures taken to promote and ensure equal treatment of and equal opportunities for the Dalit is of a very general nature and that it mainly refers to elements of national law and practice which the Committee noted previously. The Government refers to the reservations policy concerning recruitment and promotion in government services. It states that there are indications of occupational diversification taking place among scheduled castes in recent years, with members of scheduled castes shifting to urban areas for their livelihood. The Government also mentions the National Scheduled Castes Finance and Development Corporation and similar bodies at the state level which provide credit facilities to support income-generating activities, as well as the protection available under the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The National Commission for Scheduled Castes submitted its first two reports to the President of India. However, the reports are not yet publicly available. ***The Committee requests the Government to provide copies of the report of the National Commission for Scheduled Castes as soon as possible.***

4. Noting that no information has been provided concerning the issue of awareness raising, the Committee once again stresses the importance of raising awareness of the prohibition and unacceptability of caste-based discrimination and the practice of untouchability, particularly in the context of employment and occupation. Awareness-raising campaigns should be targeted to a wide range of audiences, including public officials, workers' and employers' representatives, and also the public at large.

5. The Committee is concerned about the continuing lack of information which would demonstrate the actual progress made in respect of combating and eliminating caste-based discrimination in employment and occupation and in promoting equal opportunities. Given the seriousness of the matter, it is not sufficient for the Government to assert that progress is being made; it must also provide specific and detailed information on the measures taken and the results secured by its action. ***The Committee, therefore, urges the Government to provide specific and full information, including relevant statistical data, on the following:***

- (a) 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;***
- (b) the existing programmes to promote and ensure equal opportunities for the Dalits, the measures taken to ensure their full implementation and the results achieved by such programmes;***
- (c) the extent to which men and women of scheduled caste have benefited from the National Rural Employment Guarantee Act, 2005; and***
- (d) the measures taken to ensure strict enforcement of the relevant legislation, including the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.***

6. With regard to the practice of manual scavenging, which is carried out by Dalits, and very often by Dalit women, the Committee notes that a Central Monitoring Committee has been constituted which is chaired by the Ministry of Social Justice and Empowerment to monitor the progress of implementation of the National Action Plan for Total Eradication of Manual Scavengers by 2009. The Government indicates that the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, (the 1993 Act), has been adopted by all States except Jammu and Kashmir and those States which declared themselves as scavenging free. The introduction of the centrally sponsored integrated low-cost sanitation (ILCS) scheme had been modified to provide more liberal assistance for conversion of dry latrines and construction of new water-borne latrines. Credit and subsidies for self-employment projects for former manual scavengers continue to be available under the self-employment scheme for rehabilitation of manual scavengers (SRMS). In addition, the Government affirms that no manual scavenging was practised under the control of the Indian railway authorities. The Committee notes that the Government appears to be committed to ending the practice of manual scavenging and that a new target date for its elimination has been set, as requested by the Conference Committee. ***However, the Committee urges the Government to provide the following:***

- (a) *more specific and detailed information on the action taken to eradicate the practice of manual scavenging and the results achieved, as well as the difficulties encountered;*
- (b) *statistical information, disaggregated by sex, on the operation and results of the ILCS scheme and the SRMS, as well as information on where and to what extent manual scavenging is still practised;*
- (c) *information on whether any complaints have been filed before the competent authorities, including the courts, alleging violations of the provisions of the 1993 Act, and if so, the number and outcome of such complaints; and*
- (d) *a copy of the National Action Plan for Total Eradication of Manual Scavengers, as well as copies of any judicial or administrative decisions relating to the subject of manual scavenging.*

#### **Equality of opportunity and treatment of women and men**

7. The Committee notes from the Government's report that various schemes and programmes are aimed at the economic empowerment of women through increasing their access to training, financial resources, self-employment, as well as wage employment. The Committee notes with interest the National Rural Employment Guarantee Act, 2005, which provides for a legal guarantee for at least 100 days of employment on asset-creating public work programmes every year for at least one person in every household. The Committee notes in particular that the Act provides that "priority shall be given to women in such a way that at least one third of the beneficiaries shall be women who have registered and requested for work under this Act". (Schedule II, paragraph 5). According to the Government, out of the 4,928,338 persons employed under the Act in 2006–07 some 40 per cent were women. **The Committee requests the Government to continue to provide information on the extent to which women benefit from the National Rural Employment Act, including in particular women of scheduled castes and tribes, "other backward classes" and minorities. Noting that the Government has not replied to all the requests for information made by the Committee and the Conference Committee, the Committee urges the Government to provide full information on the following matters:**

- (a) *the results achieved by the various programmes and schemes providing women with access to vocational training, income-generating activities and self-employment, including statistical information on the number of women who have benefited from the various programmes and the type of training they were able to obtain;*
- (b) *the action taken to promote women's equal access to employment in the organized and public sectors, as well as government services, including statistical information on women occupying management positions;*
- (c) *the steps taken to raise awareness of the principle of gender equality in employment and occupation; and*
- (d) *any other measures taken to promote the application of the Convention under the National Policy for the Empowerment of Women, including relevant activities of the National Commission for Women.*

8. With regard to the issue of sexual harassment, the Committee notes that in addition to including sexual harassment provisions in the civil service rules, the model standing order applicable to industry has been amended to include sexual harassment as misconduct. The Committee also notes that the Government is not granting licences to any new industry that does not have such a provision in its standing orders. The National Commission for Women and the Ministry of Human Resource Development have taken steps to ensure the necessary amendments of internal rules of workplaces. However, no information has been provided with regard to the progress made in drawing up sexual harassment legislation. **Recalling that the Government previously referred to draft legislation on sexual harassment in accordance with the directive laid down by the Supreme Court in *Vishaka v Rajasthan*, the Committee requests the Government to provide information on the status of the draft legislation and the progress made towards its adoption.**

9. Finally, the Committee recalls its previous comments concerning the National Coal Wages Agreement (NCWA) in relation to which it considered that giving preferential treatment to sons of early retirees, as well as to male dependants of workers who died in service is discriminatory. The Committee notes the Government's indication that the relevant clauses of the NCWA pertaining to the provision of employment to dependants of workers on account of disablement or death would continue to be operative until a revised scheme is prepared keeping in view the various rulings of the Supreme Court on the matter. **The Committee requests the Government to provide information on the various rulings of the Supreme Court on this matter and to provide the revised NCWA as soon as possible.**

## **Indonesia**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)**

*Article 2 of the Convention. Implementing the principle of equal remuneration for men and women for work of equal value through national legislation.* The Committee recalls its concerns expressed on the application of the principle of equal remuneration for work of equal value in the country following the allegations submitted by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), and recalls its subsequent invitation to the Government to improve the application of the Convention in the country by amending the Manpower Act No. 13/2003 and inserting an explicit reference to the principle of the Convention. The Committee notes from the Government's report that the Government has no intention of revising the Manpower Act, unless explicitly requested by the social partners, and after an analysis of the matter concerned. The Government indicates however, that Ministerial Regulation No. 48/MEN/2004 concerning company regulations and collective labour agreements, provides a

mechanism for the Government to examine compliance with non-discrimination principles. Additionally, the Committee notes the Government's indication of a number of initiatives undertaken to implement the principle of equal remuneration, ranging from training programmes for employers, workers, and government officials, to the conducting of inspections. The Committee also notes that the Minister of Manpower and Transmigration has issued a circular letter (SE/60/MEN/SJ-HK/2006) requesting the Governors of the provinces and heads of district/majors throughout the country to implement the Equal Employment Opportunity (EEO) Guidelines. While noting this general information, the Committee has not been provided with any details concerning either the concrete implementation of the EEO Guidelines and its impact on the reduction of the wage gap between men and women workers, or the results of the inspections carried out. The Committee also recalls its 2006 general observation on this Convention in which it urges governments to provide explicitly in legislation for equal remuneration for work of equal value (paragraph 6). ***The Committee again asks the Government to supply information on the concrete implementation of the principle of the Convention, including initiatives taken or envisaged to implement the EEO Guidelines, results of the inspections carried out, cases brought before national courts, and any judicial or administrative decisions concerning the principle of equal remuneration. The Committee asks the Government to take steps to give explicit legal expression to the principle of the Convention, including undertaking an analysis of the Manpower Act No. 13/2003 in consultation with the social partners, and to keep the Committee informed in this regard.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)***

1. *Article 1 of the Convention. Definition and prohibition of direct and indirect discrimination in national legislation.* The Committee refers to its previous observation concerning Act No. 13/2003 and its lack of a clear definition of indirect and direct discrimination covering all the grounds and all the aspects of discrimination in employment and occupation as contemplated by *Article 1* of the Convention. The Committee notes from the Government's report that a circular letter has been issued by the Minister of Manpower and Transmigration (No. SE/60/MEN/SJ-HK/2006), dated 10 February 2006, regarding Guidance of Equal Employment of Opportunity and Treatment in Jobs and Occupation in Indonesia containing a clear definition of direct and indirect discrimination. The Committee also notes that this circular has so far been promoted in three Indonesian provinces, namely Kepulauan Riau, West Java, and East Java. During the year 2007, the Government is expected to extend this promotion also to other provinces with a view to covering all Indonesian regions. ***The Committee asks the Government to keep it informed on the initiatives taken or envisaged to extend the promotion of the circular letter regarding Guidance on Equal Employment of Opportunity and Treatment in Jobs and Occupation to all Indonesian regions and would appreciate receiving a copy of this instrument as well as information on its implementation.***

2. *Discrimination on grounds of race, colour and national extraction.* The Committee refers to its previous observation on the allegations made by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), regarding the discrimination suffered by indigenous peoples as a result of transmigration of certain ethnic groups in the Papua and Kalimantan regions. It notes that the Government reiterates its previous argument that under the current government Transmigration Programme, transmigration is regulated so as to benefit both the local communities and the transmigrated people. The Government also states that it is still waiting for more factual information regarding what has occurred in Papua and Kalimantan. The Committee notes in this context the concerns expressed by the Committee on the Elimination of Racial Discrimination (CERD) in its concluding observations that in the Kalimantan region a high number of conflicts arise each year between local communities and palm oil companies as well as between the Dayak and the Madura ethnic groups in Palangkaraya, Central Kalimantan, as a result of past and present transmigration programmes (CERD/C/IDN/CO/3, paragraphs 17 and 18, 15 August 2007). The CERD also noted, however, that a draft law on the elimination of racial and ethnic discrimination was under consideration (paragraph 14). The Committee further notes from the Government's report that the Ministry of Manpower and Transmigration has established an action plan on equal employment opportunity through a circular letter which it has promoted in strategic regions of Indonesia. The Committee also recalls the adoption of the National Plan of Action on Human Rights for 2004–09 (Decree No. 40/2004), but has not been provided with any information on the implementation of this plan. ***The Committee asks the Government to supply information on the scope, the extent of implementation and any measurable outcomes of the action plan on equal employment opportunity established by the Ministry of Manpower and Transmigration, as well as of the National Plan of Action on Human Rights, notably as regards the elimination of discrimination on the basis of race, colour and national extraction in employment and occupation. The Committee would also appreciate receiving information on the draft law on the elimination of racial and ethnic discrimination and hopes that the Government will take the opportunity to incorporate in the draft legislation a specific provision prohibiting all the aspects of discrimination in employment and occupation as provided by the Convention. Finally, the Committee reiterates its previous requests to the Government: (a) to take steps to examine the situation of alleged race discrimination in Papua and Kalimantan and to indicate the results obtained in this regard; and (b) to indicate in its next report the concrete measures taken at national and regional levels to ensure that there is no employment discrimination on the abovementioned grounds in the implementation of the transmigration programme.***

3. *Discrimination on the ground of sex.* The Committee recalls its previous observation on discrimination suffered by women on the ground of maternity. It notes the information provided by the Government concerning the legislative provisions prohibiting dismissal relating to pregnancy and childbirth. The Government indicates in this regard that Ministerial Regulation No. PER/03/MEN/1989 concerning termination of employment prohibits dismissal of a “married couple” relating to pregnancy or childbirth. The Government also states that similar provisions shall be inserted in the individual labour contract, company regulations and collective agreements, and that labour inspectors are required to monitor the application of these provisions. The Committee points out that under the Convention, the protection against discrimination based on sex, including pregnancy, applies to all women regardless of whether they are married or not. ***The Committee asks the Government to provide a copy of Ministerial Regulation No. PER/03/MEN/1989 and urges it to amend the Regulation so as to ensure that all women are protected against dismissal relating to pregnancy or childbirth. In the absence of any further information on the effective enforcement of the legislative provisions concerning maternity, the Committee must reiterate its previous request to provide information on the activities of the labour inspectorate, such as the number of inspections carried out in relation to discrimination in employment, particularly on the ground of maternity, and the results thereof, violations reported, penalties imposed and relevant cases brought before the courts.***

4. *Article 2. Promoting equality of opportunity between men and women.* The Committee refers to its previous observation concerning the implementation of the Equal Employment Opportunity (EEO) Guidelines (2005) which it noted with interest, and notes from the Government’s report that it is providing technical guidance and carrying out assessments on equal treatment in employment and occupation in a number of companies. ***The Committee would appreciate receiving further details on the initiatives so far taken, and their practical impact, and on any other initiatives in this regard. The Committee further reiterates its request to the Government to provide information on the steps taken or envisaged to extend the application of the EEO Guidelines to the other grounds referred to in the national legislation and Article 1(1)(a) of the Convention.***

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

## Islamic Republic of Iran

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

1. The Committee notes the Government’s report, as well as the discussion that took place in the Conference Committee on the Application of Standards in June 2006, the resulting conclusions of the Conference Committee, and the report of the technical assistance mission that took place in October 2007.

2. *National equality policy.* The Committee notes the Conference Committee’s request that the Government provide a mid-term assessment in its report to this Committee on the steps taken to bring all its relevant legislation and practice into line with the Convention by no later than 2010, as this would mark the end of the period covered by the Fourth Economic, Social and Cultural Development Plan (the Plan). The Plan provides guiding principles for the drafting of laws and policies. Articles 100 and 101 stress the importance of human rights. Article 100 requires the Government to formulate a “Charter of Citizenry Rights”, encompassing a number of principles, including “securing freedom and security needed for the development of the social organizations in the area of preservation of the rights of women and children” and “propagating the unification and respectability concepts toward social groups and different ethnic groups in the national culture”. Article 101 requires the Government to prepare 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”. Article 130 empowers the judiciary to take measures towards the elimination “of all types of discrimination – gender, ethnic and group – in the legal and judicial [field]”.

3. The Committee also notes the findings of the technical assistance mission that annual monitoring and evaluation reports required under article 157 of the Plan have been prepared, and that translated summaries will be provided to the Committee. The mission also notes that the Plan does not seem to have been well publicized as there was generally little awareness of its contents beyond certain government departments. The Government also refers to the Charter of Women’s Rights adopted in 2004. ***The Committee requests the Government to provide information on the status of the adoption of the Charter of Citizenry Rights and of the National Plan foreseen under articles 100 and 101, and any measures taken to implement article 130. The Committee looks forward to receiving the translated summaries of the evaluation reports prepared, 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 also 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.***

4. *Equal opportunity and treatment for men and women.* The Committee notes the various initiatives to which the Government refers in its report aimed at improving women’s access to employment and occupation, in particular through increasing access to universities and technical and vocational training, establishing women’s cooperatives, and promoting women’s entrepreneurship. The Government emphasizes the importance of supporting women’s entrepreneurship, and to

this end refers to a number of measures, including the establishment of the Women's Entrepreneurship Guild, easing requirements for women to access loans and grants to start a business, designing a data bank for women's entrepreneurship, and technical assistance provided by the ILO. The various initiatives of the Centre for Women and Family Affairs regarding skill development, women's cooperatives and entrepreneurship are also enumerated. According to the figures provided in the Government's report, in 2006, 55 per cent of the new students admitted to state universities were women, with representation in all faculties. Women's participation in vocational and technical training has also increased. In the public Technical and Vocational Training Organization (TVTO), in 2006, a number of women undertook training in financial and business affairs, "wood industries" and civil engineering, though the largest proportion of women were concentrated in the area of information technology. ***The Committee welcomes the information regarding the number of women trained through the TVTO in a range of disciplines, and requests the Government to continue providing updated information in this regard. Given that the large majority of women are trained through private institutes, please also provide information on the participation rate of women and men in the various disciplines of technical and vocational training in institutes that are privately run. The Committee would also like to receive information regarding how the education and training received by women translates into employment opportunities once they have completed the courses. The Committee also requests information on the activities of the Women's Entrepreneurship Guild, as well as other initiatives to promote women's entrepreneurship. The Committee would also appreciate continuing to receive information on the activities of the Centre for Women and Family Affairs.***

5. The Committee notes that while the level of women's participation in the labour market remains low, it has increased from 12.2 per cent in 2003 to 13.8 per cent in 2006, and the unemployment rate for women has decreased from 19.6 per cent in 2002 to 17 per cent in 2006, according to official government figures collected by the ILO. The Government has provided some general statistics in the report regarding the rate of employment of women and men. The Committee understands from the report of the technical assistance mission that the national statistical centre and the bureau of statistics have considerable data available, disaggregated by sex, on the employment situation in the country, but that much of it is not available to the public. However, the relevant tables have been requested by the mission team. ***The Committee hopes that detailed statistics on the number of women and men in public and private sector employment, disaggregated by category and level of employment, will be provided without delay, to allow the Committee to make an accurate assessment of the extent of progress made in the situation of women in accessing higher level and non-traditional jobs.***

6. The Government acknowledges 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 raises the issue of the difficulty of women balancing work and family responsibilities. The Committee notes the findings of the mission also pointing to the difficulty for women in taking on increasing work responsibilities, without any decrease in their family responsibilities. Some measures exist, such as a legal requirement for childcare facilities at or near the workplace, and a reduced working day. They are, however, available only to women, thus reinforcing the assumption that women are solely responsible for caring for children. Many women are unable to benefit from the measures because they are often not provided in practice, and also due to the fact that a large proportion of women are hired under temporary contracts. With respect to awareness raising, the Committee notes that the Ministry of Labour and Social Affairs has held a number of workshops in labour offices since 2005, on the issue of discrimination, addressing over 1,000 participants, and on "women's labour", with over 19,000 participants. ***The Committee requests the Government to continue providing information on measures taken to improve awareness, access and enforcement of equality and non-discrimination rights and policies, as well as on protections and benefits aimed at balancing work and family responsibilities. The Committee asks the Government to consider extending the special measures for workers with children to men as well as women.***

7. ***Noting the findings of the mission regarding the prevalence of discriminatory job advertisements, the Committee asks the Government to provide information on measures taken or envisaged to prohibit such practice. Further to its 2002 general observation, the Committee again requests the Government to provide information on measures taken or envisaged to prevent and prohibit sexual harassment in employment and occupation.***

8. ***Discriminatory laws and regulations.*** The Government indicates that it has taken steps to involve law makers more closely on the issue of the need to amend or repeal discriminatory laws and regulations, and that it is constantly seeking the assistance of the social partners and non-governmental organizations in processes and negotiations that will hopefully lead to the revision of the laws and practices that are in contradiction with the Convention. However, the Committee notes that none of the provisions to which the Committee has been referring for a number of years, as set out below, have yet been amended or repealed.

9. The Committee notes the finding of the mission team that there was general acknowledgement that section 1117 of the Civil Code and the discriminatory provisions in social security regulations need to be repealed. According to the report of the mission, section 1117 of the Civil Code, which allows a husband to bring a court action preventing his wife from taking up a job or profession, has a negative impact in practice on the ability of women to enter the workforce. Attempts in the past to have this provision repealed have been unsuccessful and new initiatives have been launched; however, the report of the mission states further that "it remains to be seen whether these initiatives will be successful". There are also a number of initiatives under way with the aim of amending the provisions of the social security regulations

that favour the husband over the wife in terms of pension and child benefits, as these provisions give rise to considerable difficulties for women. With respect to the administrative rules restricting the employment of wives of government employees, the Committee regrets to note that once again the Government has provided no information on this matter. The Committee also notes that according to the mission report, there appears to be a legal barrier to being hired after the age of 30, thus impeding women who take career breaks for reasons of maternity or caring for young children from re-entering the labour market. ***Noting that the Committee has asked the Government over many years to repeal legal and administrative provisions that are not in conformity with the Convention, and noting further the urgency expressed by the Conference Committee with respect to this matter, the Committee urges the Government to repeal the relevant provisions without delay, and to inform the Committee of the concrete steps taken in this regard. Please also provide information on any legal obstacles to applying for jobs after the age of 30, and on any measures taken or envisaged to amend or repeal such provisions.***

10. With respect to women's access to the judiciary, from the Government's report, it appears that Decree No. 55080 of 1979 changing the status of female judges from judicial to administrative, thus preventing them from issuing verdicts, remains in force. The Government stresses, however, that due to recent reforms in the judiciary, women now occupy a range of judicial positions, including assistant prosecutor, remand judges, adviser to the court of appeal, adviser to the family court, and judge of guardianship and minors. The Government goes on to note that a new Bill has been introduced to elevate women as adviser judges in other types of cases, and that granting them full authority "is being seriously looked into". The Committee notes from the report of the mission that statistics on the number of men and women in the judicial system and their rank have been requested. ***The Committee urges the Government to take the necessary measures to ensure that there are no obstacles in law or in practice to women having access on an equal footing with men to all positions in the judiciary and with the same powers, and asks the Government to provide details of the measures taken in this regard. Please also provide details of the content and status of the most recent Bill regarding women in the judiciary that has been introduced, as well as statistics on the number of women and men at each level of the judiciary.***

11. Regarding the obligatory dress code for women and the imposition of sanctions in accordance with the Act on administrative infringements, the Committee has for a number of years raised concerns that this could have a negative impact on the employment of non-Islamic women in the public sector. The Committee has also raised similar concerns regarding the disciplinary rules for university and higher education institutes students. ***In the absence of any information in the Government's report on this issue, the Committee urges the Government to provide detailed information on the manner in which the abovementioned administrative and disciplinary rules regarding the dress code are being applied in practice with respect to education and employment, including information on the number of violations of the dress code and the sanctions imposed. The Committee must also again repeat its request for information on the status, contents and objectives of a bill concerning the dress code that was forwarded to Parliament in 2004.***

12. *Discrimination on the basis of religion.* The Committee notes from the report of the mission that a clear distinction is made in law and practice between recognized and unrecognized religious minorities. Recognized religious minorities have reserved seats in Parliament, are entitled to apply for positions in the public sector, and there is a quota system for hiring teachers from recognized religious minorities. However, the report of the mission goes on to state that the situation with respect to unrecognized religious minorities, and in particular the Baha'i appears to be very serious, "and there is no indication that the situation will change in the near future". They cannot apply for public sector positions, and under the circular of the Presidential High Screening Board, cannot be hired as teachers. The Committee notes the Government's statement that statistics pertaining to the employment of the Baha'i and other religious and ethnic minorities are not collected "because of the likely misinterpretation such an attempt may cause among the minorities of Iran".

13. With reference to the Baha'i, the Committee notes from the report of the mission, that out of a university population of 3.6 million students, the Government could identify only 23 Baha'i. The mission also learned that the Baha'i are not permitted to attend TVTO training. They have also been denied their pension entitlement on the express ground of being Baha'i, though the mission was informed that some measures are being taken to ensure that these pension entitlements are paid. The Committee notes the information from the mission that there appears to be "a general and deeply rooted climate of intolerance against the Baha'i that has a negative impact on their equality of opportunity and treatment in education, employment and occupation". The Committee also notes the circular referred to by the Special Rapporteur on freedom of religion or belief on increasing the surveillance of the Baha'i, as well as her reference to an increasing media campaign against the Baha'i faith (Human Rights Council, A/HRC/4/21/Add.1, 8 March 2007, paragraphs 181–183). ***The Committee is deeply concerned that the climate of intolerance against the Baha'i is a serious obstacle to their equality of access and opportunities to education, training, employment and occupation, and urges the Government to take active and effective measures to promote respect and tolerance for unrecognized religious minorities. The Committee urges the Government to ensure that all circulars or other government communications relating to limiting activities of the Baha'i in education, training, employment or occupation, are withdrawn without delay, and to take proactive measures to address the existing discrimination against the Baha'i. The Committee must also reiterate its previous comment on the practice of "gozinesh", and requests information on this practice, and on the status of the Bill that had been before Parliament asking for a review of this practice.***

14. *Ethnic minorities.* The Committee had previously requested the Government to provide statistics referred to by the Government on the increasing number of public sector positions filled by members of ethnic minorities. The Committee welcomes the information provided by the Government on the number of political positions occupied by ethnic minorities. The Committee notes from the report of the mission that members of ethnic minority groups are excluded from some positions on the ground of national security. ***The Committee again asks the Government to provide information on the employment situation of ethnic minority groups, including the Azeris, the Kurds and the Turks, in particular the 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. Please also provide information on the positions from which members of ethnic minorities are excluded on the ground of national security.***

15. *Dispute settlement and human rights mechanisms.* The Committee notes that there are a number of potential avenues for bringing complaints of discrimination, including the National Commission on Human Rights, the Islamic Commission on Human Rights, Parliamentary Article 98 Commission, the courts and the dispute settlement boards. The Committee notes that the National Commission on Human Rights was established in December 2005, and is mandated to deal with the rights of minorities. The Committee notes from the report of the mission that there appears to be a lack of awareness of the various bodies and procedures, and in some cases fear of victimization may be an obstacle to lodging a complaint. The issue of accessibility of the procedures, in particular for those alleging religious discrimination, was also raised. ***The Committee requests the Government to provide information on the number and nature of complaints lodged with the various dispute settlement and human rights bodies and the courts, including their outcome. The Committee also requests 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.***

16. *Social dialogue.* The Government in its report stresses its strong commitment for constructive dialogue with the social partners and intensifying its cooperation with the ILO regarding implementation of the Convention. However, the Committee is concerned that in the context of the present freedom of association crisis in the country, as described in the report of the technical assistance mission, meaningful social dialogue on these issues at the national level is not currently possible. The Committee also notes that while some steps have been made towards meeting the objective of bringing the relevant legislation and practice into line with the Convention, much still remains to be done. ***The Committee requests the Government to intensify its efforts to bring its legislation and practice into conformity with the Convention, in order to be able to demonstrate tangible results by 2010.***

## Jamaica

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)**

*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, 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.

## Japan

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)**

1. The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2007 and the resulting conclusions of the Conference Committee. The Committee notes in particular that the Conference Committee urged the Government to promote more actively equal remuneration for men and women for work of equal value in law and in practice. The Committee notes the Government’s report and the comments concerning the application of the Convention contained in the communication dated 19 October 2007 from the Japanese Trade Union Confederation (JTUC-RENGO) which were annexed to the report. In addition, the Committee notes the communication of 23 May 2007 from the Working Women’s Network, which was also submitted on behalf of the

Women's Union for Workers of Trading Company and the Women's Union Nagoya. This communication was forwarded to the Government on 13 July 2007.

2. *Assessment of the gender pay gap.* The Committee notes from the statistical information provided by the Government that the gender pay gap in respect of scheduled cash earnings per hour among full-time workers increased from 31.2 per cent in 2004 to 32.9 per cent in 2006. The gender pay gap is highest in manufacturing (41.4 per cent) and finance and insurance (45.2 per cent), while it is lowest in transport (23.1 per cent) and telecommunications (28.3 per cent). The Committee notes that the gender pay gap remains very high. It is particularly concerned that the hourly earnings gap for full-time workers has increased since 2004. ***Noting that the Government plans to undertake a detailed analysis of the factors underlying the gender wage gap, the Committee asks the Government to provide the results of this analysis, including indications regarding the impact of discrimination in recruitment and promotion on the gender pay gap, and the action taken to address the underlying factors. The Committee also asks the Government to continue to provide detailed and comparable statistical information on the earnings of men and women.***

3. *Part-time work.* The Committee notes that the Government expects the amendments made to the Part-time Working Law in May 2007 to contribute to the reduction of the gender pay gap. The Committee notes that under the revised Law, certain part-time workers shall be deemed to be equivalent to full-time workers which, inter alia, implies that there shall be no discrimination in respect of wages, education and training, welfare facilities and other conditions. Stressing that discrimination against part-time workers is still in many ways discrimination based on gender, JTUC-RENGO states that the revision was insufficient as only a small portion of part-time workers were covered by these new protections. ***The Committee asks the Government to provide information on the practical application of the revised Part-time Working Law, including information on the extent to which the revision has contributed to closing the gender pay gap. The Government is also asked to indicate the proportion of part-time workers, disaggregated by sex, that benefit from protection against wage discrimination under the revised Law and to state whether any consideration is being given to extending this protection to the part-time labour force more generally.***

4. *Work of equal value.* The Committee recalls that section 4 of the Labour Standards Law, which provides that in respect of wages an employer shall not engage in discriminatory treatment of a woman, as compared to a man, by reason of the worker being a woman, does not fully reflect the principle of the Convention, because it does not refer to the element of equal remuneration for work of equal value. In its report, the Government reiterates its view that section 4 is sufficient to satisfy the requirements of the Convention and recalls the court case in which wage disparities between men and women performing different work were found to be in violation of section 4 of the Labour Standards Law. The Government also explains that rotating workers from one job to another within the enterprise ensures long-term human resource development and was a common practice in Japan. In such cases, the wages were determined on the basis of "job-performance ability" and not on the basis of job evaluation. The Government therefore is of the view that prohibiting discrimination in job assignment and allocation of duties, as provided for under the Equal Employment Opportunity Law (EEOL), was an effective measure "to prevent detrimental treatment of female workers" in respect of wages.

5. The Committee notes that JTUC-RENGO calls for the revision of section 4 of the Labour Standards Law and the EEOL to ensure that both Laws prohibit gender-based wage discrimination. The Working Women's Network stated that there was only one final judgement based on section 4 of the Labour Standards Law which held that the female plaintiff's work was "work of equal value" to that of a male comparator. Highlighting the length of the equal pay proceedings, the Network argues that enforcing the principle of equal remuneration for men and women for work of equal value would be more effective if the principle was stated in the legislation. This was also necessary in the light of the ongoing change from seniority-based to merit-based wage systems.

6. The Committee wishes to emphasize that the principle of equal remuneration for men and women for work of equal value necessarily implies a comparison of the jobs or work performed by men and women on the basis of objective factors such as skills, effort, responsibility, or working conditions. Where such a comparison is not possible it is difficult to see how the principle could be applied. While the Convention takes the job content as a starting point for establishing equal remuneration, it does not prevent factors such as experience, ability and performance being taken into consideration in the determination of remuneration, as long as they are applied in an objective and non-discriminatory manner. ***The Committee therefore asks the Government to take steps to amend the legislation to provide for the principle of equal remuneration for men and women for work of equal value. It asks the Government to provide detailed information on any new court decisions regarding wage discrimination under section 4 of the Labour Standards Law that give effect to the Convention's principle. Recalling the Conference Committee's request to the Government to examine further the impact of employment management systems and wage systems on the earnings of women, with a view to addressing wage discrimination, the Committee asks the Government to indicate the steps taken in this regard and the results obtained from such an examination.***

7. *Indirect discrimination.* Recalling its previous comments concerning section 7 of the EEOL, which authorizes the Ministry of Health, Labour and Welfare to identify measures that are considered to be indirectly discriminatory, the Committee notes that section 2 of the Enforcement Ordinance under the EEOL, as amended following the 2006 revision of the EEOL, identifies three such measures: (1) criteria relating to the worker's height, weight or physical strength; (2) criteria, in the context of recruitment and employment of workers under a career tracking system, relating to the worker's availability for reassignment resulting in the worker having to change his or her place of residence; and

(3) criteria for promotion relating to the worker's experiences obtained through job rotation and reassignment. The Committee also notes the Government's indication that a general definition of indirect discrimination has been included in the Guidelines to the EEOL ("EEO Guidelines") and that in cases other than those listed in section 2 of the Enforcement Ordinance indirect discrimination could be considered illegal by the courts. The Government states that it will keep the matter under review and revise section 2 of the Enforcement Ordinance as necessary, taking into account the developing jurisprudence. JTUC-RENGO raised doubts as to the conformity with international standards of the restrictive provisions on indirect discrimination in the EEOL and indicated that it would continue to call for the inclusion of a broad and unlimited definition in the Law. The Working Women's Network also submits that a broader definition of indirect discrimination should be applied. ***Recalling that in accordance with the Convention all forms of indirect discrimination in respect of remuneration should be addressed, the Committee asks the Government to provide detailed information on the application of section 7 of the EEOL and section 2 of its Enforcement Ordinance. It asks the Government to continue to consult on the issue of indirect discrimination with workers' and employers' organizations, to report on any relevant judicial cases, and to indicate the progress made in ensuring that the definition of indirect discrimination provides effective protection from all forms of indirect discrimination in respect of remuneration.***

8. *Career tracking systems.* The Committee notes from the Government's report that according to the Basic Survey of Employment Management of Women 2006, the percentage of companies operating a career tracking system is 11.1 per cent, which is 1.6 per cent more than compared to 2003. No new information is available concerning the distribution of men and women in the different tracks. Both JTUC-RENGO and the Working Women's Network state that career tracking systems continue to be used in practice as gender-based employment management. They also state that the EEO Guidelines issued by the Government created an opening for this, because they restrict the application of the prohibition of gender discrimination to men and women within each "employment management category", which excludes comparisons between men and women employed in different categories, in contradiction with the principle of equal remuneration for work of equal value. The Committee considers that the application of the Convention's principle cannot be restricted to men and women within each different employment category established by an enterprise. ***The Government is asked to supply a copy of the EEO Guidelines for the Committee's examination and to provide its comments, if any, in reply to the above matter raised by JTUC-RENGO and the Working Women's Network. The Committee also asks the Government to provide updated statistical information on the extent to which career tracking systems are being used, including, in particular, the number of men and women on the different tracks. The Committee asks the Government to examine further the impact of career tracking systems on the earnings of women, with a view to addressing wage discrimination, as requested by the Conference Committee, and to report on the results of such an examination.***

9. *Objective job evaluation.* Recalling the Conference Committee's request to the Government to step up its efforts to promote objective job evaluation methods, the Committee notes that the Government has not provided any information on measures taken in this regard. JTUC-RENGO indicates that it had proposed the use of objective job evaluation methods as a means to implement the principle of equal remuneration for work of equal value. ***The Committee urges the Government to indicate in its next report the measures taken to promote objective job evaluation, in accordance with Article 3 of the Convention, and as requested by the Conference Committee.***

10. *Labour inspection.* The Committee notes from the Government's report that in 2005, 122,733 inspections were carried out. Ten cases of violations of section 4 of the Labour Standards Law were addressed through administrative guidance, while one case was sent to the prosecutor's office. The Committee notes the Government's indication that inspectors confirm whether the wage disparity between men and women at a workplace "depends on the fact that workers are women or the differences in posts, ability, technique, etc.". ***The Committee asks the Government to provide information on the specific methodologies used by the labour inspectors to identify instances of wage discrimination where men and women are engaged in different posts but nevertheless perform work of equal value, and to indicate whether any specific training on the principle of equal remuneration for work of equal value is being provided to labour inspectors. The Government is also asked to continue to provide information on the cases of violations of section 4 of the Labour Standards Law, including on the facts of the cases.***

## Jordan

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1966)***

1. *Article 1 of the Convention. Work of equal value.* The Committee recalls its previous observation in which it had noted that the narrow formulation of section 23(ii)(a) of the Constitution, which specifies that all workers shall receive wages appropriate to the quantity and quality of the work achieved, and the provisions in the Labour Code did not ensure the application of the principle set out in the Convention. The Committee emphasized that while objective criteria such as quality and quantity of work may be used to determine the level of earnings, it was important that the use of such criteria did not have the effect of impeding the full application of the principle of equal remuneration for men and women for work of equal value. The Committee notes that the only measures taken by the Government to ensure the application of this principle is a promotion and awareness-raising campaign on the importance of applying the provisions of the Convention.

2. The Committee notes from the statistics provided by the Government on the distribution of men and women by occupation and wage level for the years 2000–03 that the differences in wage levels between men and women remained significant in 2003, and that the labour market is highly segregated. The Committee, therefore, recalls its general observation of 2006 on this Convention which states that “historical attitudes towards the role of women in society, along with stereotypical assumptions regarding women’s aspirations, preferences, capabilities and ‘suitability’ for certain jobs, have contributed to occupational sex segregation in the labour market...”. In order to address such occupational segregation, where men and women often perform different jobs, under different conditions, and even in different establishments, the concept of “work of equal value” is essential, as it permits a broad scope of comparison. The observation underscores that “comparing the value of the work ..., which may involve different types of qualifications, skills, responsibilities or working conditions but which is nevertheless work of equal value overall, is essential in order to eliminate pay discrimination which results from the failure to recognize the value of work performed by men and women free from gender bias”. Therefore, legal provisions that are narrower than the principle as laid down in the Convention “hinder progress in eradicating gender-based pay discrimination against women at work”. ***The Committee urges the Government to take the necessary steps to amend its legislation so as to provide not only for equal remuneration for equal, the same or similar work, but also to prohibit pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)***

1. *Access of women to the civil service.* The Committee recalls its previous observation in which it expressed concern over the continuing occupational segregation of women in the lower categories of the public service and the slow progress in achieving an equitable balance between men and women in the public service, particularly at higher levels. The Committee notes that the Government submits that by encouraging women to work for longer service periods they will become capable of meeting the established competitive conditions to fill supervisory positions which require an accumulation of knowledge and experience over long years of service. The Committee further notes the Government’s explanations that under the Civil Retirement Act of 1995 women were allowed to leave the civil service early to work in the private sector and as such receive two pensions, one under the Civil Retirement Act and one under the Social Security Act. Female civil servants therefore preferred, after having served the statutory period required for retirement, to leave the civil service to work in the private sector due to the low salaries in comparison with the private sector, especially in the education sector which accounts for 65 per cent of the public service. The Government expects that this phenomenon will disappear since all public service employees are now covered by the Social Security Act. According to the Government, this should reflect positively on the choice of female civil servants to stay in the public service and as such accumulate the years necessary to enjoy a higher degree of competitiveness to access positions at higher levels. The Committee further notes that in 2002, the Government increased the period of service required for going into civil service retirement by five additional years for both men and women, but that this has generated strong disagreement among the national women’s associations. While appreciating the information by the Government on the measures taken, the Committee questions whether these measures effectively address the persistent problem of occupational segregation of men and women in the different occupational categories of the civil service. The Committee also wishes to point out that where seniority is a determining factor for purposes of promotion into higher level posts, the equitable application of this criterion should not lead to indirect discrimination against female civil servants. Moreover, female civil servants whose employment has been interrupted for reasons of maternity or family responsibilities will be penalized to the extent that their seniority in the civil service is curtailed by the period of the interruption. In order to prevent indirect discrimination, it may be necessary to review, in the light of the principle laid down in the Convention, the choice and weighting of the elements to be taken into account in evaluating a civil servant’s possibilities and capabilities in accessing higher level posts. ***The Committee asks the Government:***

- (a) *to review whether the weight given to the criterion of accumulated knowledge and years of experience to access higher level posts in the civil service has a discriminatory impact on women’s possibilities to access such posts;*
- (b) *to take more proactive measures to address the occupational segregation within the civil service, including the taking of measures to overcome the problem of women having an insufficient number of accumulated years of experience and knowledge, and to promote women in higher level posts, and further to provide information on the results achieved; and*
- (c) *to continue supplying information on the distribution of men and women in all posts of the civil service.*

2. *Equal access of men and women to vocational training.* The Committee recalls its previous comments on the measures taken to improve women’s educational attainment, technical skills and experience and the need to diversify women’s employment opportunities. The Committee notes the extensive information in the Government’s report on the measures taken to increase women’s access to vocational training. It notes in particular the efforts, despite existing stereotypes on women’s “suitability” for certain jobs and occupations, to increase the capacity of vocational training institutes to provide training for women and girls and to promote their participation in a wider range of vocational training courses, including those traditionally offered to male students. The Committee is encouraged by these developments but

would still need more concrete information to assess the specific impact of these measures on women's chances to compete on an equal basis with men for a wider range of employment opportunities, including in higher level positions. *The Committee, therefore, asks the Government to continue to take the necessary measures to ensure that the type of training available for women is enabling them de facto to access a wider range of jobs, and to provide information in its next report demonstrating any real progress made in this regard. Such information should include up to date statistics disaggregated by sex on the participation rates of men and women in the various training courses and the number of men and women who have found employment as a result of such training.*

3. *National policy on equality on other grounds.* The Committee notes the Government's statement that the Government has always pursued a national policy of equality of opportunity and treatment for all, and that both nationals and non-nationals can join training programmes regardless of race, colour, religion, national extraction, political opinion or social origin. The Committee must once more regret that the information provided in the Government's report remains very general and vague and does not indicate that any measures are being taken to address discrimination based on grounds other than sex. The Committee reminds the Government that under *Articles 2 and 3 of the Convention*, the effective application of a national policy requires the implementation of appropriate measures and programmes to promote and correct de facto inequalities which may exist in training, employment and conditions of work. *The Committee, therefore, urges the Government to indicate in its next report the concrete measures taken or envisaged, as set out in Article 3(a) to (e) of the Convention, to guarantee the effective application of the Convention with respect to the grounds of race, colour, national extraction, religion, political opinion and social origin.*

## Republic of Korea

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)**

1. *Assessment of the gender pay gap.* The Committee notes the Government's indication that the gender pay gap (regular monthly wages plus overtime pay – excluding bonuses and performance-based pay) decreased from 35.2 to 33.8 per cent between 2002 and 2005. With regard to the total monthly earnings, the Committee notes from data published by the Ministry of Labour that the gender wage gap (regular employees) increased from 37.6 per cent in 2003 to 38.2 in 2004, and then decreased to 36.9 in 2006. The Committee also notes the comments of the Korean Confederation of Trade Unions (KCTU) emphasizing the need to examine wage disparities affecting workers according to their employment status (regular and non-regular workers). *The Committee asks the Government to continue to provide detailed statistical information on the gender wage gap, as well as information on the Government's assessment of its evolution. In this regard, please also provide information on how workers are affected by gender-based wage inequalities in relation to their status as regular or non-regular employees, and provide related statistical data.*

2. The Committee notes that the gender pay gap for workers in Korea remains very wide and is a matter of concern that requires the Government's urgent attention and action. Measures to address gender-based occupational segregation and work and family reconciliation, which are relevant to gender-based wage discrimination, are addressed by the Committee in its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Workers with Family Responsibilities Convention, 1981 (No. 156), respectively.

3. *Equal remuneration for work of equal value – comparing remuneration for jobs of a different nature.* In its previous comments, the Committee noted that the Supreme Court, for the first time, issued a ruling regarding gender-based wage discrimination (Supreme Court Decision SCR2002 DO3883, 14 March 2003), in which it relied on the definition of equal pay for work of equal value as contained in the Ministry of Labour's Equal Treatment Regulation (No. 422). The Committee noted that according to that regulation and the ruling, work of equal value refers to jobs which are equal or almost equal by nature or which, though *slightly* different, are considered to have equal value. In this context, the Committee asked the Government to elaborate further on the meaning of the expression "slightly different".

4. The Committee notes from the Government's report that the notion of "slightly different" work means that comparisons of the work of men and women should be made not only when they perform the same work but also when they are engaged in different jobs and different occupational categories, which is often the case in Korea. The Government also indicated that because it was difficult in such cases to prove that gender wage differentials were due to sex discrimination, the existing government policies limit the resolution of disputes concerning remuneration of men and women performing different work.

5. While noting the Government's explanations, the Committee considers that limiting the possibility of comparing work performed by men and women to "slightly different" work, as provided for in the Regulation and accepted by the Supreme Court, appears to limit unduly the full application of the principle of equal remuneration for men and women for work of equal value as set out in the Convention. As emphasized in its 2006 general observation, "work of equal value" also encompasses work that is of an entirely different nature but which is nevertheless of equal value. In this regard, the Committee welcomes the Government's indication that the limited scope of application of the principle as provided for under the regulation has been recognized and that revision of the regulation's provisions in this respect is envisaged. *The Committee asks the Government to provide information on the progress made in revising the Equal Treatment Regulation (No. 422) with a view to ensuring the full application of the principle of equal remuneration for men and*

*women for work of equal value, in law and in practice, and to continue to provide information concerning any relevant judicial or administrative decisions concerning equal remuneration.*

6. *Promoting and ensuring the principle's application.* The Committee notes the Government's indication that in order to extend the application of the principle of equal remuneration for work of equal value it is necessary for businesses to modify the existing labour management system and pay systems. The Government also states that in many enterprises job appraisals were currently being carried out in the context of the introduction of merit-based pay systems and that it was offering consulting services to enterprises in this regard. Awareness-raising activities were planned to promote the integration of the principle of equal remuneration for work of equal value in human resource management. However, requiring enterprises by law to adopt objective job evaluation systems was difficult, as this would entail costs. ***The Committee asks the Government to provide more detailed information on the consulting services it provides, specifically indicating the manner in which these services promote respect for the principle of equal remuneration for men and women for work of equal value. In this regard, please indicate the number of enterprises that have made use of the Government's assistance and provide examples of measures taken by enterprises in order to integrate the equal pay principle into the management and pay systems.***

7. The Committee notes that according to the Federation of Korean Trade Unions (FKTU), companies do not permit workers' representatives to participate in the elaboration of objective job evaluation systems as such matters are regarded as management prerogatives. The Government states that modifications in the labour management system and pay systems should be based on consensus with employees. However, the Government also states that according to its understanding of the situation, the involvement of workers in objective job evaluation at the workplace level was not yet fully activated. ***The Committee asks the Government to provide information on the measures taken to promote the collaboration with and participation of workers' organizations in the elaboration and revision of methods for the objective evaluation of jobs.***

8. The Committee notes the Government's statement that the labour inspectors were being provided with appropriate guidance and training and that labour inspectors would continue to be active with a view to narrowing gender pay differentials that are not based on educational attainment, the job and job tenure. ***The Committee asks the Government to provide detailed information on the specific activities undertaken by the labour inspectorate to identify and remedy violations of the principle of equal remuneration for men and women for work of equal value, including information on the number and nature of cases of unequal remuneration detected and any remedies provided or sanctions imposed.***

9. In its previous comments, the Committee noted that the principle of equal remuneration as set out in the Convention extends beyond cases where work is performed in the same establishment or business, and that this makes it possible to address discriminatory effects of horizontal occupational segregation based on sex. ***Noting the information provided by the Government, including the Government's statement that the principle of equal remuneration is applied at the workplace level, the Committee asks the Government to take measures to promote and ensure the application of the principle beyond the enterprise level by ensuring that the reach of comparison between jobs performed by men and women is as wide as allowed by the level at which wage policies, systems and structures are coordinated, as indicated in the General Survey on the Convention of 1986 (paragraph 72). Please provide information on any measures taken in this regard.***

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1998)***

1. In its previous observation, the Committee noted comments made by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), in 2005 expressing concerns over the inflexible nature of the Employment Permit System, established under the Act on Foreign Workers' Employment. The ICFTU considered that the Employment Permit System made foreign workers excessively dependent on the employers and thus vulnerable to exploitation and abuse, and that it also inhibited their access to higher-paying jobs. Having noted the Government's reply to the ICFTU's comments, the Committee noted that where a system of employment of migrant workers places those workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them, this could result in discrimination based on grounds such as race, colour, sex, religion or national extraction against migrant workers, contrary to the Convention. The Committee, therefore, requested the Government to provide further information on the Employment Permit System and, in particular, on how this system ensures that migrant workers are protected against discrimination. The Committee also wished to examine further any other measures that may have been taken to ensure that migrant workers are not discriminated against in practice.

2. *The Employment Permit System.* The Committee notes from the provisions of the Act on Foreign Workers' Employment and the Notice for Foreign Workers published by the Ministry of Labour that under the Employment Permit System low-skilled foreign workers have an opportunity to work in certain sectors of the economy under renewable one-year contracts for a period no longer than three years. As a general rule, foreign workers may not change their employers during the three-year period. On an exceptional basis, a worker may apply for a transfer to another business or workplace where the employment permit is cancelled by the authorities because the employer has violated the provisions concerning working conditions as stipulated in the labour contract or the legislation. However, during the three-year period, foreign

workers can apply for a change of employer on this basis only three times. Employers hiring workers through the Employment Permit System must subscribe to departure guarantee insurance and payment delay insurance to cover severance pay and delayed or unpaid wages. Following the three-year period, foreign workers must leave the country for at least six months. This period can be reduced to one month where the employer makes a request for re-employment.

3. *Legal protection from discrimination available to migrant workers.* The Committee notes that section 22 of the Act on Foreign Workers' Employment provides that an employer "shall not give unfair and discriminatory treatment to foreign workers on grounds of their status". The Government indicates that, accordingly, foreign workers were now covered by the labour legislation, including the Labour Standards Act, the Minimum Wage Act and the Industrial Safety and Health Act. The Committee recalls that section 6 of the Labour Standards Act provides that an employer shall not discriminate against workers on the ground of gender or extend discriminatory treatment in relation to the conditions of employment on the grounds of nationality, religion or social status. More specific protection from discrimination based on sex, including sexual harassment, is available under the Equal Employment Act. However, domestic workers remain outside the scope of the labour legislation and the Equal Employment Act.

4. Under the National Human Rights Commission Act, migrant workers can petition the National Human Rights Commission in case of employment discrimination on a wide range of grounds, including race, colour, and national or ethnic origin. In August 2007, the Government indicated to the Committee on the Elimination of Racial Discrimination that a new Discrimination Prohibition Act was under preparation which would make discrimination illegal and prohibited. The Committee understands that this legislation would protect migrant workers from discrimination in the workplace based on their race, sex or nationality.

5. *Enforcement.* The Government's report further states that, in response to the increasing number of foreign workers, regular labour inspections have been carried out in industries with a high concentration of foreign workers, such as manufacturing and in the food and service sectors. In 2005, 637 inspections concerning the working conditions of foreign workers found 639 violations in 361 workplaces. The Committee also notes that, between 1 January 2003 and 31 July 2007, a total of 344 cases were filed by migrant workers before the courts or administrative agencies, with a marked increase of cases in 2006. These cases concerned almost entirely delayed payment of wages, only one dealt with an unfair labour practice and none of them involved sexual harassment. According to the Government's information, 1,222 cases concerning employment discrimination were filed with the National Human Rights Commission between 25 November 2001 and 23 October 2006, in 75 of which the Commission issued recommendations. Only one case related to the situation of migrant workers.

6. *Assistance to migrant workers.* The Committee notes that the Government in partnership with private partners has set up migrant workers centres in Daeri-don, Seoul and Ansan to provide, free of charge and in numerous foreign languages, support to foreign workers through counselling and handling of grievances on labour-related matters, interpretation, information and education, as well as medical services. Additional centres are planned. The Committee notes that between 1 January 2005 and 30 June 2007 a total of 85,286 migrant workers were using these centres, and that 42,258 of them made use of counselling services and grievance handling.

7. *The Committee's assessment.* The Committee welcomes the fact that the Employment Permit System has introduced new elements of protection for migrant workers. It notes that migrant workers are now generally covered by the labour and anti-discrimination legislation. However, domestic workers, who are predominantly women, remain outside the scope of this legislation, which raises doubts as to how they are protected from discrimination and abuse. The Committee also notes that efforts have been made by the Government to monitor the application of the labour legislation and to provide information, assistance and counselling to migrant workers. However, noting the concerns expressed by the Committee on the Elimination of Racial Discrimination over the persistence of widespread societal discrimination against foreigners, including migrant workers, in all areas of life, including employment (CERD/C/KOR/CO/1, 17 August 2007, paragraph 11), the Committee considers that further efforts are necessary to address such discrimination and ensure full compliance with the legislation and the Convention. Effective labour inspection and access of migrant workers to legal remedies, including accessible and speedy complaints procedures, are important in this regard. In addition, given the continuing increase of migrant workers in the country, the Committee considers it important that the Government keeps the operation of the Employment Permit System under review, with a view to further diminishing the migrant worker's dependency on the employer by providing for appropriate flexibility to change workplaces, as a means of avoiding situations in which migrant workers become vulnerable to discrimination and abuse. Migrant workers suffering such treatment may refrain from bringing complaints out of fear of retaliation by the employer, including termination or non-renewal of their contract. At the same time, bringing a complaint would appear necessary in order to establish that the employer has violated the contract or legislation, which is a requirement for being granted permission to change the workplace. Even in cases where a migrant worker launches a complaint, he or she is confronted with uncertainty as to whether this would lead to a change of workplace.

8. *The Committee requests the Government to continue to provide information on the measures taken or envisaged to ensure the full application of the Convention in respect of migrant workers, including information on the following measures:*

(a) *to strengthen further the enforcement of the legislation applicable to migrant workers with a view to eliminating and preventing discriminatory or abusive practices and treatment contrary to the Convention and the legislation,*

*including through providing accessible and effective complaints procedures and providing adequate information, counselling and legal assistance to migrant workers;*

- (b) to keep the operation of the Employment Permit System under review with a view to further decreasing the level of dependency of migrant workers in relation to their employers. In this regard, the Committee invites the Government to consider allowing migrant workers to apply for a change of business or workplace for significant personal reasons;*
- (c) to protect migrant domestic workers, many of whom are women, from discrimination and abusive treatment at work.*

9. *Equality of opportunity and treatment of women and men.* The Committee notes that the rate of women's labour force participation has increased somewhat, from 50.1 per cent in 2005 to 50.3 per cent in 2006, but still remains relatively low compared to men (74.1 per cent in 2006). The Committee also notes that some progress has been made in increasing the participation of women in senior and top management positions, although women remain significantly under-represented in this category. In 2005, only 5 per cent of employees in the occupational group of "legislators, senior officials and managers" were women, while their participation increased to 8 per cent in 2006. Only 0.4 per cent of women participating in the labour force in 2006 held positions in this category, compared to some 4 per cent among men.

10. In this context, the Committee notes with interest that amendments to the Equal Opportunities Act which entered into force on 1 March 2006 formalized the affirmative action programme previously applied in the public sector on a trial basis, and extended it to private enterprises. The new affirmative action scheme covers government institutions, state-owned enterprises and private enterprises with more than 1,000 employees (i.e. a total of 617 workplaces in 2007), and, as of 1 March 2008, workplaces with more than 500 employees will be covered. The scheme involves the collection of data on the participation of men and women in the different occupational categories and at the different levels of responsibility, reporting of such data to the Ministry of Labour, the adoption of action plans at the enterprise level to address imbalances, as well as reporting and evaluation of results achieved. ***The Committee requests the Government to continue to provide information on the measures taken to promote gender equality in employment and occupation in the private and public sectors, including information on the implementation of affirmative action measures under the Equal Employment Act. It requests the Government to provide detailed information on the results achieved by such action, including statistical information on the participation of men and women in employment in the different sectors of the economy, the various occupations and at the different levels of responsibility.***

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

## Kuwait

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1966)***

1. *Access of women to particular occupations.* The Committee again draws the Government's attention to its repeated comments on the under-representation of women in particular occupations under the Government's control. The Committee recalls the Government's statement from its report to the Committee on the Elimination of Discrimination against Women (CEDAW) that, "for a variety of reasons" Kuwait has laws ruling out the possibility of women working in certain posts in the military, the police, the diplomatic corps, the Administration of Justice Division and the Department of Public Prosecutions (CEDAW/C/KWT/1-2, 1 May 2003, page 25). Given such statements, the Committee continues to regret the Government's insistence that national legislation and the agencies responsible for public appointments do not violate the principle of equality. It reminds the Government that under the Convention, a State undertakes to pursue a policy of equality of opportunity and treatment in respect of employment under its direct control and that any exclusions from occupations contrary to the Convention should be repealed (*Article 3(c) and (d)*). ***The Committee asks the Government to indicate the legal basis for excluding women from certain posts in the abovementioned occupations and asks the Government to report on progress made with regard to removing any exclusions contrary to the Convention. The Government is further asked to examine and take measures to overcome the practical barriers that exist in society that prevent women from accessing certain posts and careers, and to pursue a policy of equal opportunity and treatment for men and women in occupations under its direct control. Please also provide statistics on the number of men and women in all the different posts of the military, police, diplomatic corps, Administration of Justice Division and Department of Public Prosecutions.***

2. *Discrimination on the basis of race, colour and national extraction.* In response to the Committee's previous comments on discrimination on the basis of race, colour and national extraction, the Government indicates that it has taken measures to prohibit discrimination against all workers. The Committee regrets, however, that the Government does not supply any concrete information on the measures adopted to prevent such discrimination in practice and the outcome of these same measures. In the absence of any further information on the activities undertaken, the Committee remains concerned about the Government's commitment to put in place effective measures to ensure that no person, including foreign workers, is subjected to discrimination and unequal treatment on the basis of race, colour or national extraction. The Committee stresses the importance of taking action on this matter, particularly in light of the high number of foreign

nationals from different ethnic and racial backgrounds working in Kuwait. *The Committee again hopes that the Government will make every effort to include detailed information in its next report on the practical measures taken or envisaged to prevent discrimination against all workers on the basis of race, colour and national extraction in regard to employment and occupation, including measures to foster public understanding and acceptance of the principles of non-discrimination and equality. In addition, recalling the information provided by the Government in its previous report, the Committee also asks to be kept informed on any developments in amending the Penal Code to include express provisions concerning racial discrimination.*

3. *Application of the Convention to domestic workers.* In response to the Committee's comments on the protection of domestic workers from discriminatory treatment, the Committee notes that the Government repeats information previously submitted on the regulation of domestic service agencies (Act No. 40 of 1992). The Government recalls that this legislation specifies the rights of domestic workers including the commitment of the guarantor to provide the accommodation, clothing, food, medical care and payment of agreed wages. Domestic workers also have the right to submit a complaint against the employment agency of the guarantor. The Committee continues to observe, however, that the Act does not appear to include provisions prohibiting discrimination against domestic workers either in terms of their access to employment or their conditions of work. It further recalls the explicit exclusion of domestic workers from the scope of application of the draft Labour Code (section 5). *The Committee, therefore, continues to be concerned about the absence of legal measures or practical steps taken to address discriminatory treatment against migrant workers in Kuwait and asks the Government to provide detailed information in its next report on the specific action it has taken or is considering in this regard. The Government is also requested to include information on the number and outcome of complaints of discrimination submitted by domestic workers under Act No. 40 of 1992 against their employment agencies or guarantors. Please also provide information on the status of the draft Labour Code and whether the Government is considering including domestic workers within the scope of the law. Lastly, the Committee understands that an inter-regional forum on expatriate labour was planned for early 2007 and it asks the Government to provide information on the deliberations and outcomes of this forum, in particular with regard to the issue of discrimination and domestic workers.*

4. *National policy.* The Committee once again draws the Government's attention to *Articles 2 and 3 of the Convention*, which require the Government to declare and implement a national policy designed to promote equality of opportunity and treatment in employment and occupation with a view to the elimination of any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin. It recalls that the effective application of such a policy requires the implementation of specific measures and programmes to promote genuine equality in law as well as in practice, and correct de facto inequalities which may exist in training, employment and conditions of work. *The Committee hopes that the Government's next report will be able to show progress in the development and application of a national policy, and asks to be kept informed in this regard, in particular of the results achieved of any specific measures and programmes undertaken.*

## Lebanon

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)**

*National legislation to provide for equal remuneration for work of equal value.* The Committee notes that section 56 of the draft Labour Law provides for equal remuneration for men and women wage earners for work of equal value without discrimination based on sex. While welcoming this provision, the Committee also notes the Government's statement that Legislative Decree No. 29 of 13 May 1943 specifies that women employed to undertake "equal work and tasks" as those undertaken by men, earn the basic wages received by male workers and employees. Furthermore, the Government states in its report that the basic principle is to ensure that there is no discrimination between men and women in remuneration within the same occupation. The Committee draws the attention of the Government to its 2006 general observation on this Convention in which it noted that difficulties in applying the Convention in law and in practice resulted in particular from a lack of understanding of the scope and implications of the concept of "work of equal value". "Work of equal value" includes but goes beyond equal remuneration for "equal", the "same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. *Noting the discrepancy in the national legislation as well as the Government's apparent restrictive interpretation of the concept of equal value, the Committee asks the Government: (1) to resolve the discrepancy in the national legislation; and (2) to provide information in its next report demonstrating that the application of section 56 of the new Labour Law, once adopted, also extends to work performed by men and women that is of equal value, taking into account the explanations provided by the Committee in its 2006 general observation. It further hopes that the draft Labour Code will be adopted in the very near future.*

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1977)***

*Article 1(1)(a) of the Convention. Legislative prohibition of discrimination in employment and occupation.* For a number of years, the Committee has been following the efforts of the Government to update and amend its Labour Law in line with international labour standards and, in particular, with Convention No. 111. Time and again, it has been encouraging the Government to take this opportunity to introduce a comprehensive prohibition of discrimination in employment and occupation based on all the grounds set out in *Article 1(1)(a)* of the Convention. The Committee now notes that section 1 of the most recent version of the draft Labour Law defines a “wage earner” as “every man, woman or young person ... without any discrimination whatsoever as to race, colour, religion, sex, political opinion, national or social origin, or discrimination that would lead to repealing or weakening the implementation of equal opportunities or treatment in employment and occupation”. Section 35 of the draft Law states that “female workers shall be subject to all legal provisions governing work without gender-based discrimination or distinction in the same job”. While sections 1 and 35 provide that provisions of the Labour Law must be applied to every wage earner without distinction, the Committee considers nevertheless that they fall short of prohibiting discrimination in employment and occupation as defined in the Convention. Moreover, the Committee notes with regret that section 26 of the existing Labour Law (as amended in 2000), which prohibits discrimination between men and women in employment, remuneration, promotion and vocational training, has not been carried over into the new draft Law, which constitutes a step backwards in the application of the Convention. ***The Committee therefore urges the Government to use this process of amendment to introduce in the new Labour Law an explicit prohibition of direct and indirect discrimination based on all the grounds listed in the Convention and in respect of all aspects of employment.***

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

### **Liberia**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(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:

*Having previously noted that there was no legislation or national policy to implement the Convention, the Committee hopes the Government will soon be in a position to provide full information on any administrative, legislative or other measures which are explicitly designed to eliminate discrimination based on all of the seven grounds prohibited by the Convention (race, colour, sex, religion, political opinion, national extraction or social origin) and to promote equality of opportunity and treatment in respect of employment and occupation. The Committee also requests the Government to provide full information on how the Convention is applied in practice in conformity with Parts II–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.*

### **Libyan Arab Jamahiriya**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1961)***

1. *Discrimination based on race, colour or national extraction.* For a number of years, the Committee has been engaging in a dialogue with the Government regarding the need to take measures to combat a climate of anti-black sentiment and racially motivated acts against foreign workers which might have an adverse impact on the employment situation and terms and conditions of employment of black Africans in the country. The Committee notes the Government’s statement that it has already clarified this matter in previous reports and that the Jamahiriya pays attention to the protection of citizens from the African Union and from other countries. The Government further maintains that there is no discrimination, and that it is providing job opportunities to achieve socio-economic development in all the countries of the African Union. The Committee regrets that despite repeated comments of the Committee, the Government continues to give general replies on this issue without providing any details on the actual measures taken to address discrimination against foreign workers on the basis of race, colour or national extraction in employment and occupation. It reminds the Government that it has the obligation under the Convention to take active measures to protect citizens and non-citizens against racial and ethnic discrimination. ***The Committee strongly urges the Government to provide full particulars in its next report on the measures taken, including any research or studies undertaken, to prevent and eliminate the occurrence of racial and ethnic discrimination in all aspects of employment and occupation, and to promote tolerance, understanding and respect between Libyan citizens and workers from other African countries.***

2. *National policy on equality of opportunity and treatment.* Over the past ten years, the Committee has asked the Government to provide information on the practical effect given to Act No. 20, 1991, on the promotion of freedom which, according to the Government, is the basis of its national policy to combat all discrimination on the seven grounds set out in the Convention in *Article 1(1)(a)*. In its reply, the Government continues to maintain that discrimination is prohibited in

the national legislation and that no complaints have been received regarding discrimination in employment. It failed, however, to give any further information on the content and methods of promoting and implementing a national policy on equality of opportunity and treatment. The Committee understands from the Government's statement in its most recent report that Act No. 20 concerns equality between men and women and does not cover any of the other grounds contained in the Convention. The Committee is seriously concerned about the persistent lack of information in the Government's report on its obligation under *Article 2 of the Convention* to declare and pursue a national policy on equality with respect to all the grounds covered by the Convention. The Committee recalls that this includes the setting up of programmes along with the implementation of appropriate measures according to the principles outlined in *Article 3* of the Convention. ***The Committee urges the Government to provide full details in its next report on how a national policy has been declared and on the general methods and measures by which such a policy is being implemented with respect in particular to the grounds of race, colour, religion, political opinion, national extraction and social origin.***

3. *Adoption of anti-discrimination legislation.* Further to the above, the Committee notes that there is 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 considers that the adoption of such legislation constitutes an important step towards the adoption and implementation of a national policy on equality, and demonstrates a country's commitment to achieving the objectives of the Convention. ***Noting that the Labour Code is currently being redrafted in order to be submitted to the Peoples' Congress, the Committee strongly encourages the Government to consider including provisions prohibiting direct and indirect discrimination in employment and occupation on all the grounds contained in the Convention, and to provide information on the progress achieved in this regard.***

4. *Equality between men and women with respect to access to employment.* Further to its previous observation regarding the employment of women, the Committee notes from the statistics provided in the Government's report that the percentage of economically active women increased from 15.65 per cent in 1995 to 29.59 per cent in 2006. It also notes the Government's indication that women work in all economic activities and assume high-level positions in the government and in the judiciary. The Committee welcomes this increase but considers that women's economic activity rate remains low as compared to men (60.48 per cent in 2006). ***The Committee requests the Government to provide more detailed statistics disaggregated by sex on the employment of women and men in the various occupations and sectors of the economy, including statistics on their employment in judicial and public prosecution posts, in the judicial administration as well as in high-level positions in both the public and private sectors.***

5. *Access of women to vocational training and education.* The Committee notes Decision No. 258, 1989, of the General People's Committee relating to the rehabilitation and training of Libyan women. It notes that certain of its provisions refer to "suitable job opportunities to women", to training for "occupations and skills that are suitable to their psychological and physical make-up", and study fields that are "suitable to women's nature and their social conditions". The Committee reminds the Government that social stereotypes that deem certain types of work as "suitable to women's nature or social conditions" or to "their psychological and physical make-up" are likely to lead to women and men being channelled into different education and training and subsequently into different jobs and career tracks, thus encouraging occupational segregation. While more fields of training and employment may be opening up for women, the Committee is concerned that the practical effect of these provisions may result in inequalities in the labour market and occupational gender stereotyping. ***The Committee asks the Government to clarify the meaning of "suitable job opportunities", "suitable to their psychological and physical make-up", and "suitable to women's nature and their social conditions", and to provide information on the measures taken or envisaged to ensure that women are not excluded or discouraged from participating in vocational training courses or being denied job opportunities in traditionally male areas.***

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

## Luxembourg

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 2001)***

1. Recalling its previous comments concerning the national legislation applying the Convention, the Committee notes with satisfaction that during 2006 a number of laws have been enacted further strengthening the legislative and institutional framework for the promotion of equality of opportunity and treatment in employment and occupation. The Committee welcomes the fact that progress has been made by introducing new anti-discrimination legislation, and also by strengthening and consolidating provisions applying the Convention contained in constitutional, labour, as well as penal law.

2. *The Constitution.* The Committee notes that the Act of 13 July 2006 amended article 11(2) of the Constitution to read as follows: "Women and men are equal in rights and duties. The State must actively promote the elimination of any existing obstacles to equality between women and men." The Committee welcomes the introduction of a positive duty on the State to promote equality of men and women. In this context the Committee notes the National Action Plan for Equality of Women and Men 2006, particularly its section on the economy, as well as the Government's indication that a number of public-awareness activities are planned in the context of the European Year for Equal Opportunities for All

2007. *The Committee requests the Government to provide information on the implementation of the National Action Plan as far as it relates to the promotion of equality of men and women in employment and occupation. The Government is particularly requested to provide information on the adoption and implementation of equality plans in the civil service and the private sector, as well as the implementation of positive measures to promote full equality. The Committee also wishes to be kept informed of any decisions of the Constitutional Court involving article 11(2) of the Constitution in relation to employment and occupation.*

3. *Anti-discrimination legislation.* The Committee also notes with interest the adoption of the Act of 28 November 2006, transposing the European Council directives 2000/78/EC and 2000/43/EC and amending the Labour Code, the Criminal Code and the Act on disabled persons. The Act prohibits direct and indirect discrimination, inter alia, in employment and occupation based on religion or belief, disability, age, sexual orientation, and real or presumed membership or non-membership of a particular race or ethnic group (section 1). The Committee notes particularly the provisions concerning the shifting of the burden of proof in civil or administrative discrimination cases. The Committee notes with interest that the Act of 28 November 2006 provides for the establishment of a Centre for Equal Treatment as an independent institution to promote, analyse and monitor equal treatment of all persons, irrespective of race, ethnic origin, sex, religion or belief, disability or age.

4. *Labour legislation.* The Committee notes that the provisions concerning equality between women and men previously contained in separate laws, such as the Act of 8 December 1981 concerning equality of opportunity and treatment of men and women and the Act of 26 May 2000 concerning protection from sexual harassment at work, have been integrated into the new Labour Code (Act of 31 July 2006). Further, the Committee notes that the Act of 28 November 2006 introduced a new Chapter V (equal treatment) into the Labour Code containing corresponding provisions (sections L.251-1 and L.251-2), supplemented by provisions permitting certain exceptions based on essential and determining occupational requirements (section L.252-1). With regard to age, differential treatment may be permissible if it relates to a legitimate objective concerning employment policy, the labour market, or vocational training (section L.252-2). The Labour Code also permits special measures to compensate for disadvantages related to one of the prohibited grounds, with a view to promoting full equality in practice (section L.252-3). Further, the Committee notes that section L.253-1 provides for protection from victimization, including the possibility of reinstatement of workers who have been dismissed after having raised complaints or protests in relation to the right to equal treatment. As regards the public service, the Committee notes that provisions concerning discrimination on the grounds of religion or belief, disability, age, sexual orientation, and real or presumed membership or non-membership of a particular race or ethnic group have been introduced by Act of 29 November 2006 amending the 1979 State Civil Service Act and the 1985 Municipal Civil Service Act.

5. *The Penal Code.* The Committee notes that the definition of discrimination set out in section 454 of the Penal Code, as amended by the Act of 28 November 2006, continues to include all prohibited grounds listed in *Article 1(1)(a) of the Convention*. Recalling its previous comments that section 455 of the Penal Code did not penalize discrimination in respect of certain aspects of employment and occupation covered by the Convention, the Committee notes that the amended section 455, in line with the Committee's previous comments, now also penalizes discriminatory acts relating to access to work, vocational training, working conditions and affiliation with or engagement in a workers' or employers' organization (section 455, point 7 of the Penal Code).

6. *In relation to the above, the Committee requests the Government to provide, in its next report, information concerning the practical application of the non-discrimination and equality provisions contained in the Act of 28 November 2006, the Labour Code, the Penal Code as well as the civil service legislation, including information on any cases decided by the competent courts or dealt with by the labour inspectors. The Committee also requests the Government to provide information on the establishment, functioning and specific activities of the Centre for Equal Treatment during the reporting period.*

7. *Cooperation with the social partners.* The Committee notes that under the Labour Code, collective agreements must include provisions reflecting the result of negotiations concerning measures to apply the principle of equality between women and men in undertakings or enterprises to which the agreement applies. In this regard, negotiations must be held concerning the adoption of gender equality plans (section 162-12, paragraph 4(4) of the Labour Code). *The Committee requests the Government to provide information on the collective agreements concluded in accordance with this provision that promote and ensure equality of opportunity and treatment and to indicate any examples of equality plans adopted following collective negotiations.*

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

## Madagascar

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1961)

*Articles 1(1)(b) and 2 of the Convention.* Equality of opportunity and treatment of workers living with HIV/AIDS. The Committee welcomes the adoption of Act No. 2005-040 of 20 February 2006 concerning the fight against HIV/AIDS

and the protection of the rights of persons living with HIV/AIDS. It notes with interest that Chapter IV of the Act protects the rights of persons living with HIV/AIDS in the workplace. Chapter IV prohibits all forms of discrimination or stigmatization at the workplace based on proven or presumed serological status (section 44). Section 46 provides that the serological status of a worker, her or his partner or close family members shall not constitute a direct or indirect cause for non-recruitment or termination of employment. In addition, section 50 states that all workers with HIV/AIDS must be able to continue to work and to enjoy normal possibilities for advancement. The Act also prohibits mandatory HIV testing in the context of work and establishes confidentially requirements in case the employer has knowledge of the serological status of an employee or his or her family members (sections 47 and 49). The Committee also notes that a national strategy will be formulated and implemented to guide action for the fight against HIV/AIDS (section 3). ***The Committee requests the Government to provide information in its future reports on the implementation and enforcement of the provisions of Act No. 2005-040 relating to equality of opportunity and treatment in employment and occupation of men and women living with HIV/AIDS, including information concerning the national strategy referred to in section 3 of the Act, and relevant court decisions.***

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

## Malawi

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1965)***

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

1. *Application of the principle in the civil service.* For a number of years, the Committee has been asking the Government to provide statistical information disaggregated by sex that would enable it to assess the application of the Convention in the civil service. The Committee notes that a new civil service job grades and salary structure came into effect in October 2004 which consists of 18 grades and salary scales, ranging from A (the highest) to R (the lowest). It also notes with some regret that the Government continues to provide its previous explanations that it is not possible to provide sex-disaggregated statistics on the civil service because salaries apply across the board and therefore apply equally to men and women. At the same time, the Government indicates that women occupy only 14.3 per cent of managerial positions in the civil service from grades S4/P4 and above, which, under the new system, correspond to grades "E" to "A". Noting the low percentage of women holding managerial posts, the Committee points out once again that one of the causes of pay differentials between men and women is horizontal and vertical occupational segregation of women into lower paying jobs or occupations and lower positions without promotion opportunities. The Committee also points out that statistical information on the employment of women and men according to occupational groups, and their corresponding salary levels, is essential to allow an adequate evaluation of the nature, extent and causes of the pay differentials between men and women. ***It therefore asks the Government:***

- (a) ***to provide information on the measures taken or envisaged to promote the principles of the Convention through policies aimed at labour market desegregation (e.g. promoting equal access of women to all occupations and economic sectors and to jobs with decision-making and management responsibilities), and their impact on reducing the remuneration gap between men and women; and***
- (b) ***to provide statistical information, disaggregated by sex, on the participation of men and women in employment in all the different grades of the public service, and their corresponding salary levels.***

2. *Wage disparities between men and women in rural areas.* The Committee draws the Government's attention to its previous observation in which it had commented on the communication submitted by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), concerning the discrimination faced by rural women. It had also noted the Government's indication that some wage disparities existed between men and women workers in rural areas and that in some cases employers were paying employees less than the recommended statutory minimum wage. In this regard, the Committee had referred to the need to take measures to inform employers and men and women in rural areas about the requirements of the Convention and the national legislation concerning equal pay. The Committee notes the Government's statement that the labour inspectors have taken on this task and that there are no wage differences between men and women in rural areas. The Government further explains that Malawi has a two-tier minimum wage system which applies to all sectors but that no minimum wages have been set for the agricultural sector. Moreover, in most agricultural undertakings women prefer to work fewer hours than men because of family and household responsibilities.

3. The Committee reminds the Government that the minimum wage is a significant means of ensuring the application of the principle of equal remuneration for men and women for work of equal value. Furthermore, it wishes to emphasize the importance of promoting measures to facilitate reconciliation of work and family responsibilities and the equal sharing of family responsibilities between men and women in order to promote the application of the Convention. ***Accordingly, the Committee asks the Government:***

- (a) ***to indicate whether it intends to establish a minimum wage for the agricultural sector or to adopt any other appropriate measures in order to ensure improved application of the principle of equal remuneration for work of equal value for men and women workers in this sector;***
- (b) ***to indicate the measures taken or envisaged to assist rural women in reconciling their work and family responsibilities and to promote a more equitable sharing of family responsibilities between men and women workers; and***
- (c) ***to provide statistical data, disaggregated by sex, on the number of men and women employed in agricultural undertakings, and their corresponding occupations, earning levels and hours of work, and to continue to keep the Committee informed of any wage disparities between men and women reported by the labour inspection services in remote rural areas, and the corrective action taken.***

***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.

**Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**  
(ratification: 1965)

*Equality of opportunity and treatment between men and women.* The Committee notes the information provided by the Government concerning its efforts to correct disparities in educational opportunities for girls and boys. The Committee notes in particular that the measures taken to enhance the education system included gender equality considerations. *The Committee requests the Government to continue to provide information on measures taken to address unequal access of women to training and education at all levels. In this regard, the Committee reiterates its request for information that would allow the Committee to appreciate the actual progress made, including statistical information on the participation of women in training and education. In addition, the Committee requests the Government to provide information on the following matters to which it has not yet replied:*

- (a) *the measures taken or envisaged, especially with regard to the recruitment policy and further training policy, to achieve an overall increase in the participation of women in higher level posts in the public service. In this regard, please also provide updated statistical information, disaggregated by sex, showing the progress made to ensure equal access of women to public service employment at all levels;*
- (b) *the measures taken or envisaged to facilitate access to soft loans for rural women as a means of assisting them to run small businesses, thereby reducing unemployment and poverty. The Committee also requests information on the number of rural women who have benefited from credit facilities.*

The Committee is raising other matters 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.* In its previous comments, the Committee referred to article 123 of the Constitution and section 86 of the Federal Labour Act, which establish the right to equal pay for equal work performed in equal jobs, hours of work and conditions of efficiency, without taking into account either sex or nationality. It further noted that the Federal Labour Act to Prevent and Eliminate Discrimination did not give expression in law to the principle of “equal remuneration for work of equal value”, as set out in the Convention. The Committee once again hoped that, when discussing the reform of the Federal Labour Act, the Government would take into account the Committee’s comments so as to give legislative expression to the principle of the Convention. The Committee notes the Government’s indication that it has taken note of the Committee’s comments, and that the Workers’ Confederation of Mexico, in a communication transmitted through the Government, reiterates its agreement to the introduction of amendments and additions to modernize and update the labour legislation. The Committee refers to its general observation of 2006 and particularly paragraph 6, in which it indicated that, “Noting that several countries still retain legal provisions that are narrower than the principle as laid down in the Convention, as they do not give expression to the concept of ‘work of equal value’, and that such provisions hinder progress in eradicating gender-based pay discrimination against women at work, the Committee urges the governments of those countries to take the necessary steps to amend their legislation. Such legislation should not only provide for equal remuneration for equal, the same or similar work, but also prohibit pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value.” *The Committee, therefore, asks the Government to make every effort required to bring its legislation into conformity with the principle of work of equal value as laid down in the Convention and to keep the Committee informed on the progress achieved in this respect.*

**Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**  
(ratification: 1961)

1. The Committee notes the Government’s report, the discussion in the Conference Committee on the Application of Standards in June 2006, the conclusions of the Conference Committee and a communication from the Confederation of Mexican Workers (CTM), which was forwarded by the Government on 3 October 2006.

2. *Pregnancy testing in export processing enterprises and other discriminatory practices.* In the abovementioned Conference discussion, issues were addressed that the Committee has been examining for several years and which concern allegations of a number of systematic discriminatory practices against women in export processing zones (*maquiladoras*), and vacancy announcements that discriminate on grounds of race and colour.

3. The Conference Committee took note of information submitted by the Government representative: it welcomed the fact that in 2002 the Ministry of Labour and Social Insurance and the Chairperson of the National Council of the Maquiladora Export Industry (CNIME) had signed an agreement for concerted action to contribute to improving women’s working conditions in the *maquila* industry and that the CNIME had undertaken, among other commitments, to promote in each of its member *maquila* enterprises the dissemination of the national legislation and international treaties on the rights of women workers. It also took note of the activities carried out by the National Institute of Women (INMUJERES) in cooperation with employers’ and workers’ organizations to alert women workers to their rights. On the matter of

legislation, it noted that amendments to the Federal Labour Act had been drafted in order expressly to prohibit discrimination based on sex and maternity and that on 3 March 2006 Regulations on employment agencies had been adopted which expressly prohibited discrimination on grounds of sex, pregnancy, and ethnic origin.

4. *Mechanisms to assess the impact of measures adopted and progress achieved.* The Conference Committee noted the efforts made by the Government to address discrimination and to promote equality, particularly with regard to women workers in *maquiladora* enterprises. It noted, however, that the practical effect of these efforts was still unclear and that problems in applying the Convention still appeared to exist in law and practice, particularly in *maquiladora* enterprises, with regard to eliminating discrimination against women. The Conference Committee considered that it would be necessary to establish some means of measuring the impact of the measures taken by the Government and assessing the progress made. It accordingly asked the Government to provide information on any investigations carried out on the existence of such discriminatory practices, the mechanisms available to monitor the situation in practice, trends in this situation and any penalties applied or envisaged.

5. The Committee notes that, according to the Government's report, the policy implemented by the Government focuses mainly on preventive measures in that penalties are not the primary means of enforcing the provisions of the Convention. The Committee points out that it has for several years been examining the situation of women in the *maquila* industry in Mexico and has noted allegations by the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), concerning a requirement of pregnancy testing, denial of leave and other statutory maternity-related rights and an obligation for pregnant women to work in hazardous and difficult conditions to dissuade them from continuing to work. The Committee notes that the Government has sent useful information on promotional activities, but has not responded to the abovementioned issues, which the Committee raised in its last observation and which were in turn addressed by the Conference Committee. ***In view of the seriousness of the abovementioned allegations, and taking note of the Government's efforts in the area of preventive measures, the Committee once again requests information on any investigations carried out on the existence of these discriminatory practices, mechanisms to monitor the situation in practice and any changes in the situation observed, any penalties applied or envisaged and any other information enabling the Committee to gain a clearer picture of the situation and of the Government's efforts to tackle this serious discrimination.***

6. *Legislation.* With regard to its previous comments, the Committee notes the copy of the draft amendment of the Federal Labour Act provided by the Government. It notes that the amendment is before Congress and that it expressly establishes that women shall not be required to certify that they are not pregnant in order to have access to and remain in employment. ***The Committee asks the Government to provide a copy of the amended Act as soon as it is adopted.*** The Committee notes with interest the General Act on Equality between Men and Women of 2 August 2006 which sets down guidelines and institutional machinery for enforcing equality in both the public and the private sectors. ***Please provide information on the implementation of this Act and practical results achieved pursuant thereto.***

7. *Promotional and preventive activities.* The Committee notes the extensive information sent by the Government on numerous prevention activities. It notes in particular the National Programme for the Prevention and Elimination of Discrimination, 2006, and the activities report of INMUJERES for 2005–06. It notes that in 2005 the National Council for the Prevention of Discrimination (CONAPRED) started up publication of its "Inclusive company" series and published "Discrimination in companies". In addition, in the context of the CNIME, courses have been run for 462,000 women working in the *maquila* industry. The Committee notes that the National Programme for the Prevention and Elimination of Discrimination aims, under the objective "work" in strategic guideline 3(IV), "to ensure compliance with the statutory prohibition on requiring pregnancy testing as a condition for obtaining or remaining in a job and achieving promotion" and that point 7 refers to a system of indicators and monitoring of the extent to which the anti-discrimination legislation is applied and the impact and effectiveness of public policy on equal treatment. ***The Committee asks the Government to provide copies of this evaluation showing to what extent the objective has been achieved.***

8. *Cooperation with employers' and workers' organizations.* The Committee notes the information from the CTM that it has joined forces with the employers' organizations and the federal Government to apply a policy promoting equal opportunities in employment and occupation and to eliminate all forms of discrimination. ***Please provide information on the practical measures taken pursuant to this cooperation and the results achieved.***

## Namibia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)***

1. *Articles 1 and 2 of the Convention. Legislative developments.* The Committee notes that section 5 of the Labour Act (No. 15 of 2004), which replaces the 1992 Labour Act, contains detailed provisions on equality of opportunity and treatment. The 2004 Act prohibits discrimination in any employment practice, directly or indirectly, against any individual on one or more of the following grounds: race, colour, ethnic origin, marital status or family responsibilities, religion, creed or political opinion, social or economic status, degree of physical or mental disability, AIDS or HIV status, and previous, current or future pregnancy (section 5(2)). "Employment practice" is broadly defined in section (1)(b) to cover all aspects of employment and occupation in accordance with *Article 1(3)* of the Convention. The Committee notes with

satisfaction that the new legislation explicitly prohibits indirect discrimination and defines and prohibits sexual harassment (section 5(4)–(5)), as recommended by the Committee in its previous comments. In addition, the Committee notes that section 7 of the Labour Act 2004 provides that disputes concerning the application or interpretation of section 5 may be referred to the Labour Commissioner who may appoint a conciliator to attempt to resolve the dispute. If the dispute remains unresolved, an arbitrator is to be appointed. Persons who consider that their fundamental rights under section 5 have been infringed or threatened can also bring the matter before the competent courts. The Committee understands that a new Labour Act has been adopted in 2007, but has not yet been enacted. ***The Committee requests the Government to provide in its next report information on the practical application of sections 5 and 7 of the Labour Act, 2004, including information on the number, nature and outcomes of disputes brought before the competent authorities. In this regard, the Government is requested to indicate any measures taken to assist victims of discrimination to take legal action. The Committee also requests the Government to provide information on the status of the 2007 Labour Act.***

2. *Article 1(1)(b). Additional grounds.* In its previous comments the Committee requested the Government to indicate whether the additional grounds set forth in the Labour Act, 1992 (economic status, marital status, sexual orientation, family responsibilities and disability) are to be covered by this Article of the Convention. In its report, the Government stated that “the additional grounds as set out in the Labour Act, 1992 (Act No. 6 of 1992) are to be covered under this section of the Convention”. In this regard, the Committee notes that the Labour Act, 2004, no longer prohibits discrimination based on the ground of sexual orientation, which was the case under the 1992 legislation. ***In the light of the Government’s statement indicating its acceptance that the ground of sexual orientation is to be included in the definition of discrimination for the purpose of this Convention, the Committee requests the Government to take measures to ensure that workers are protected against discrimination on the ground of sexual orientation, and to provide information in this regard.***

3. *Articles 2 and 5. Affirmative action.* The Committee notes with interest that the Employment Equity Commission carried out an Affirmative Action Impact Assessment Study in 2004. The Study examined the results achieved between 2000 and 2004 in promoting equal participation in employment of persons belonging to one of the three designated groups (racially disadvantaged persons, women, persons with disabilities) under the Affirmative Action (Employment) Act, 1998. The study showed that most workplaces covered by the Act were still far from being balanced in terms of gender and colour. White men continued to dominate in management positions with women, particularly black women, being concentrated in lower job categories. Only some enterprises employed persons with disabilities and only very few of them implemented concrete programmes to accommodate persons with disabilities.

4. The Committee notes from the 2005–06 Annual Report of the Employment Equity Commission that, in response to the impact assessment study of 2004, assistance to and training for employers was stepped up in order to strengthen affirmative action at the enterprise level. In its report, the Employment Equity Commission concludes that, as a result of these efforts, the number of affirmative action reports received under the Act has increased during 2005–06. However, this has not necessarily translated into an improvement of the representation of persons in designated groups in management positions. In addition, the Committee notes that, while previously workplaces with more than 50 employees were required to report under the 1998 Act, the reporting threshold has been lowered to workplaces with more than 25 employees.

5. The Committee welcomes the continuing efforts made in Namibia to assess and strengthen national policies and mechanisms to promote equality in employment and occupation in a proactive manner. ***The Committee requests the Government to continue to provide information on the implementation of affirmative action in employment and occupation and on any measures taken to increase the impact of the laws and policies providing for such action. The Committee also requests the Government to provide more detailed information on the measures taken to respond to the training needs of women, racially disadvantaged persons and persons with disabilities in order to promote equal opportunities for all, including statistical information on their participation in training and education at all levels.***

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

## Nepal

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1976)***

1. *Articles 1 and 2 of the Convention. Application in law.* The Committee notes that article 13 of the Interim Constitution 2007 provides that “no discrimination in regard to remuneration and social security shall be made between men and women for the same work”. The Committee notes that this provision is not in conformity with the Convention, under which there is an obligation to promote and ensure the principle of equal remuneration for work of equal value. In accordance with the Convention, men and women should not only receive equal remuneration when they perform the *same work*, but also when they perform *work of equal value*. The Committee has elaborated on the meaning and implications of the notion of work of equal value in its 2006 general observation to which the Government’s attention is drawn. ***The Committee asks the Government to ensure that the Convention’s provisions are taken into account in the preparation of Nepal’s future Constitution and hopes that it will guarantee the right of men and women to equal remuneration for work of equal value.***

2. The Committee also recalls that the 1993 Labour Rules provide that, “in the event that male or female workers or employees are engaged in work of the same nature in an establishment, they shall be paid equal remuneration without

discrimination” (Rule 11). As previously stated by the Committee, this provision is not in full conformity with the Convention, as it does not appear to allow for a comparison of work done by men and women which is different but nevertheless of equal value. ***The Committee once again urges the Government to ensure compliance of the national legislation with the Convention in the context of the labour legislation review process. The Government is requested to indicate the measures taken with a view to addressing this matter.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1974)***

1. *Articles 1 and 2 of the Convention. Application in law.* The Committee welcomes the Interim Constitution of Nepal 2007 which contains strengthened equality provisions as compared to the Constitution of 1992, which it replaces. Article 13 of the Interim Constitution introduces the possibility of taking special measures for the protection, empowerment and advancement of the interests of the Dalits and the indigenous tribes. Article 14 contains expanded provisions prohibiting and making punishable under the law racial discrimination or untouchability of any form on grounds of caste, descent, community or occupation. ***The Committee requests the Government to provide information on the progress made in the preparation of a new Constitution.***

2. The Committee considers that, in addition to constitutional guarantees concerning the right to equality and the right to employment (articles 13 and 18 of the Constitution), the inclusion of non-discrimination and equality provisions into the labour or other relevant legislation may be required to ensure that all men and women are effectively protected from discrimination in employment and occupation on all the grounds covered by the Convention, including race, colour, sex, religion, political opinion, national extraction or social origin. The Interim Constitution appears to prohibit employment discrimination by private employers only as far as discrimination based on caste, descent, community or occupation is concerned. ***Noting that the process for the revision of the Labour Act is ongoing, the Committee urges the Government to make every effort to introduce provisions prohibiting discrimination in employment and occupation on the basis of all grounds listed in the Convention, as well as sexual harassment at work.***

3. *Discrimination on the ground of political opinion.* The Committee recalls that sections 10 and 61(2) of the Civil Service Act provide that “moral turpitude” constitutes a ground for exclusion or removal from the civil service. Recalling its request to the Government to provide information on the practical application of these provisions in order to ascertain that they do not lead to discrimination based on political opinion, the Committee regrets that the report contains no information on this matter. However, the Committee notes that the Civil Service Act is currently being amended. ***It trusts that the Government will use this opportunity to repeal the abovementioned provisions and requests the Government to provide information on any further developments in this regard in its next report.***

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

## **Netherlands**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)***

The Committee notes the comments attached to the Government’s report of the Trade Union Confederation Middle Categories and Senior Staff Unions (MHP) of 17 August 2006 and the Confederation of Netherlands Industry and Employers (VNO–NCW) of 13 July 2006 concerning the application of the Convention.

1. *Discrimination on the basis of colour, race, national extraction and religion.* The Committee recalls its previous observation in which it had noted the rapidly deteriorating labour market position of men and women from ethnic minorities and the apparent decline in efforts to eliminate employment discrimination of ethnic minorities despite the fact that discrimination on the grounds of colour, race and national extraction were more prevalent. Moreover, the expression of negative views concerning the presence of ethnic minorities in society, particularly Muslims, had apparently also increased. The Committee notes the statistics provided by the Government confirming previous figures that the employment rate of ethnic minorities systematically declined between 2001 (49.7 per cent) and 2005 (46.9 per cent) and the unemployment rate almost doubled during that same period (from 8.9 to 16.4 per cent). The Government indicates that a positive trend should nevertheless be noted with respect to first-generation Surinamese and second-generation Antilleans who, even in times of low economic activity, managed to maintain their position in the labour market. The Committee further notes that the Government acknowledges that labour participation of migrant women is still lagging behind that of women of Dutch origin and that participation is particularly low among Turkish and Moroccan women and women from the so-called new ethnic minority groups (e.g. from former Yugoslavia, Somalia, Islamic Republic of Iran and Afghanistan). The Committee notes that in its recent concluding observations the Committee on the Elimination of Discrimination Against Women (CEDAW) expressed similar concerns that racism persisted in the Netherlands and that particularly immigrant, refugee and minority women suffered from multiple forms of discrimination with respect to their access to education and employment. The CEDAW also expressed concerns that gender stereotypes about migrant women and women belonging to ethnic minorities were reflected in their position in the labour market (CEDAW/C/NLD/CO/4, 2 February 2007, paragraphs 15 and 27).

2. The Committee notes that the Government continues to take various measures involving the social partners and minority organizations, to combat discrimination in the labour market on the grounds of race and ethnic origin. In particular, a Task Force on Youth Employment was set up to generate 40,000 jobs for young people and in this context work is being done to counter the negative images of and discrimination against ethnic minorities in the labour market. In addition, projects have been financed with the aim of empowering migrant youth and preparing them for the labour market, and a Steering Group on Migrant Women and Employment will operate until the end of 2007 with the aim of encouraging more migrant women to go to work. The Committee notes further that the Government's report includes very general information on a Broad Initiative on Social Cohesion and agreements reached at the Employment Summit in 2005 between the Government and the social partners on the issue of migrant labour participation. The Government also states that the Labour Foundation has made recommendations to parties to collective agreements and companies to pursue a policy on minorities and to combat discrimination in recruitment and selection. The Committee notes that, according to the VNO–NCW, these were the most important achievements over the past few years. With respect to other initiatives taken by the Government, such as guidelines for psychological tests relevant to ethnic minorities for use in job application processes, awareness-raising campaigns on discrimination and research conducted on the removal of impediments to ethnic minorities in the labour market, the Committee notes that the VNO–NCW questions the impact of these measures; it indicates that issues such as early school leaving and language deficiencies as well as levels of qualifications should also be taken into account when presenting the situation of ethnic minorities. The Committee further notes the comments of the MHP stating that due to a change in policy, the post of State Secretary for Equal Opportunity disappeared as did the special attention devoted to equal opportunity policy in the general policy of the Ministry of Social Affairs and Employment. As a result, a number of specific measures with the objective of promoting the participation of women in the labour market have been discontinued.

3. The Committee appreciates the information provided by the Government on the abovementioned initiatives to address discrimination on the basis of race and national extraction, but remains uncertain about the actual impact and effectiveness of these measures in achieving genuine equality of ethnic minorities in employment and vocational training. The information provided is general as to the contents and outcomes of the initiatives and research undertaken, agreements reached and recommendations made, as well as their follow-up. *In view of the fact that, in spite of these measures, employment data continue to show a mainly negative trend as to the employment and education of men and particularly women belonging to ethnic minorities, the Committee reiterates its request to the Government to increase its efforts, in collaboration with employers' and workers' organizations, to address discrimination in employment and occupation on the basis of race, colour, ethnic origin or religion. The Committee asks the Government in particular: (1) to provide information demonstrating whether and to what extent measures such as the Broad Initiative on Social Cohesion, the Task Force on Youth Employment, the Steering Group on Migrant Women and Employment, as well as the guidelines on psychological tests and awareness-raising campaigns have had an impact on increasing the access of ethnic minority groups, and particularly women, in employment and occupation; (2) to provide more detailed information on the contents of the agreements reached on migrant labour participation and the recommendations made by the Labour Foundation, as well as on the research conducted on the removal of impediments to ethnic minorities in the labour market, and the specific follow-up given to these initiatives; and (3) to continue to provide statistical data, disaggregated by sex and origin on the employment and training situation of ethnic minorities. Please also provide information on any other measures taken, and their impact, on decreasing discrimination in hiring and promoting access to employment and training of men and women belonging to ethnic minorities.*

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 as well as the comments by the New Zealand Council of Trade Unions (NZCTU) and of Business New Zealand (Business NZ) attached to the Government's reports on this Convention and on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

1. *Articles 1 and 2 of the Convention. Equal pay legislation.* The Committee recalls its previous comments in which it emphasized that the requirement in the Convention for equal remuneration for men and women for work of equal value goes beyond the concept of equal remuneration for the same or similar work as currently provided for in the Employment Relations Act 2000 (ERA), the Human Rights Act 1993 (HRA) and the Equal Pay Act 1972 (EPA). Furthermore, the scope of comparison has to be as wide as possible, as allowed by the level at which wage policies, systems and structures are set, and not restricted to cases where employees work for the same employer, as provided for in the ERA. The Committee notes the Government's statement that it has no plans to amend the current equal pay legislation. Instead, it is implementing a Pay and Employment Equity Plan of Action to give effect to the principle of equal remuneration for work of equal value. The Committee recalls its 2006 general observation on this Convention underlining the importance of legislation fully reflecting the principle of the Convention. *The Committee urges the Government to consider amending its equal pay legislation at the earliest opportunity, so as to provide not only for equal remuneration for equal, the same or similar work, but also to prohibit pay discrimination that occurs in situations where men and*

*women perform different work that is nevertheless of equal value. The Government is also requested to keep the Committee informed of any jurisprudence indicating that the relevant legislative provisions concerning equal pay are being interpreted by the courts within the broader meaning of Articles 1(b) and 2 of the Convention.*

2. *Article 2. Measures to promote equal remuneration for work of equal value.* The Committee recalls its previous comments regarding the recommendations made by the Task Force on Pay and Employment Equity in 2004, and notes with interest the various initiatives described in the Government's report implementing the Five Year Plan of Action on Pay and Employment Equity. It notes in particular that pay and employment equity reviews are being carried out in the public service and the public health and education sectors, most of which will be completed in the course of 2008. Guidelines for pay investigations reviewing the value of the work and the factors and processes affecting remuneration are also being developed and will primarily target female-dominated occupations. Claims for additional funding for remedial pay settlements arising from pay and employment equity reviews will be considered within existing budget processes through a tripartite process. The Committee further notes that Phase Two of the Action Plan will cover crown entities and state-owned enterprises and government-funded contract workers, and that consideration will be given to extending the pay and employment equity exercise to employees in local government and in the private sector. In this regard, the Committee notes the concern expressed by Business NZ that the private sector cannot rely on the taxpayer to fund pay increases for "female" occupations resulting from pay equity reviews. This would be particularly true in the health sector where private providers may have difficulty in matching "remedial" pay increases granted to nurses working in public institutions. Lower paid employees in the private health sector, where employment opportunities are often reliant on government contracting, may well be in that situation because state funding is inadequate to allow for the pay increase that might otherwise be considered necessary. According to Business NZ, most perceived payment inequities are to be found in the state sector where high numbers of women work in what are seen as the "caring" professions. ***The Committee asks the Government to provide information on the results achieved by the pay and employment equity reviews and the pay investigations undertaken in the public sector, as well as any specific follow-up action being given to the outcome of these reviews. The Committee also asks the Government to indicate how it intends to address difficulties encountered by employers in the private health sector in matching remedial pay increases granted to employees in public institutions. Please also keep the Committee informed of any steps that are being taken to extend the Pay and Employment Equity Plan of Action to other employees, including those in the private sector.***

3. *Article 3. Job evaluation.* The Committee notes with interest the development of the "equitable job evaluation tool" – a gender-neutral job-evaluation system for use in pay investigations and for general use – which has been specifically designed to facilitate better recognition and contribution of female-dominated occupations to performance of important areas of the state services. In addition, the Committee notes that Standards New Zealand has developed a voluntary "gender inclusive job evaluation standard", a practical guide and reference point for ensuring that job evaluation and the remuneration process are carried out in a gender-inclusive way. ***The Committee asks the Government to provide further details on the use of the gender-neutral job evaluation tools that have been developed and their impact on reducing gender pay differentials in the public as well as in the private sectors.***

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 comments of the New Zealand Council of Trade Unions (NZCTU) and of Business New Zealand (Business NZ) and the Government's response thereto.

1. *Articles 2 and 3 of the Convention. Equality of opportunity and treatment based on race, colour and national extraction.* The Committee recalls its previous comments relating to existing labour market inequalities along ethnic lines especially for Maori and Pacific people. The Committee notes from the Government's report that in 2005, the unemployment rate for Maori and Pacific people further declined but that they continue to be disproportionately distributed in the industry groupings of wholesale and retail trades and the occupational groupings of plant and machine operators and elementary occupations. The Committee notes that the Government is taking comprehensive measures to improve the training and employment opportunities of the Maori and Pacific people. It notes in particular the Pacific Workforce Development Strategy of the Ministry of Pacific Island Affairs (MPIA), the Maori Tertiary Education Framework and the Pasifika Education Plan. It also notes the programmes of the Office of Ethnic Affairs such as the Language Line, the Ethnic Perspective in Policy and the draft Intercultural Awareness and Communication programme to support the development of intercultural awareness issues in employment and the workplace. The Committee also notes that the Tertiary Education Commission is running a number of programmes aimed at helping under-represented groups to achieve equality in employment and vocational training, which appear to have had some positive impact on the situation of Maori and Pacific people.

2. The Committee notes, however, that the NZCTU, while welcoming the progress made in promoting training and employment opportunities for Maori and Pacific people, continues to raise concerns about existing labour market inequalities along ethnic lines. The NZCTU indicates that while the rate of Maori participation in tertiary education has grown exponentially over the past few years, the proportion of Maori students leaving school without qualifications

remains much higher than other students. Maori are also more likely to enrol in diploma and certificate-level programmes and they continue to be under-represented in degree level and postgraduate programmes. The NZCTU further draws attention to the fact that young people, Maori, Pacific people and Asian workers, and sometimes new migrants, are facing prejudices by employers based on stereotyping. Surveys conducted with employment agencies showed that having a foreign sounding name could reduce the likelihood of a job applicant obtaining an interview. According to the NZCTU, there has also been an impact on New Zealand born and educated job applicants perceived as being foreign, particularly Asian and Pacific people, as well as new migrants. The NZCTU, while acknowledging that current skills and labour shortages are helping employers to focus more on the tasks required for the job, submits that more work is needed to encourage employers to look beyond their prejudices and to make better use of the untapped potential of these groups.

3. The Committee further notes that a number of initiatives are being carried out to implement the Auckland Migrant and Refugee Strategy with a view to improving the employment situation of the migrant and refugee population. Initiatives include, among others, the appointment of specialist migrant case managers and work brokers to facilitate regular job search seminars and individualized assistance for newly arrived or underemployed migrants; an employment programme for highly qualified migrant engineers; specialized job search programmes for migrant and refugee jobseekers such as Migrant Job Link and the Auckland Chamber of Commerce Work Experience Programme for professionally qualified migrants; and support for, and expansion of, services to migrant centres across the regions. The Committee, while welcoming these initiatives, remains nevertheless concerned about the existing prejudices and stereotypical attitudes of employers vis-à-vis migrant workers and the impact of these attitudes on the employment situation of migrant workers. ***The Committee asks the Government: (1) to continue to provide information on the education and training initiatives, and their impact, on improving access of Maori and Pacific workers to training and education, including in degree-level and postgraduate courses, and to employment; (2) to provide information on the measures taken or envisaged to address discriminatory attitudes based on race, colour, or national extraction, including any research or awareness-raising campaigns; and (3) to indicate the specific measures taken, including under the Auckland Migrant and Refugee Strategy, to address stereotypical attitudes by employers with respect to migrant workers and to ensure that migrant workers are not discriminated against on the basis of race, colour or national extraction.***

4. *Equality between men and women in employment and occupation.* The Committee notes from the figures for 2004 in the Government's report that occupational gender segregation continues to be significant in New Zealand's labour market. Men are still overrepresented in the occupational categories of legislators, administrators and managers, trades workers, agricultural and fishery workers, elementary occupations and plant and machine operators; women are overrepresented in the categories of community social and personal services, clerks, professionals and service and sales workers. The Committee notes the concern raised by the NZCTU that career breaks due to childbearing and raising a family and the lack of family-friendly support in the workplace constitute barriers for women seeking to return to work at the same level and to access more senior posts. The Committee notes in this regard the activities carried out to achieve the goals set under the Action Plan for New Zealand Women of the Ministry of Women's Affairs (MWA) such as the Pay and Employment Equity Plan of Action for the public sector, the Working for Families Package, the paid parental leave provisions, the work-life balance initiatives and the increased funding for Early Childhood Education. ***The Committee asks the Government to indicate how these measures have had an impact on improving equality between men and women in the workplace, and in particular on facilitating the return to, and reintegration in, the workforce of women with family responsibilities, as well as on addressing the occupational gender segregation in the labour market. Noting the extensive measures taken to assist workers with family responsibilities, the Committee asks the Government to indicate whether any consideration is being given to ratifying the Workers with Family Responsibilities Convention, 1981 (No. 156).***

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

## Norway

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)***

The Committee notes with interest the adoption of new legislation in the field of equality and non-discrimination. It notes in particular the following: the Act (No. 33 of 2005) on the prohibition of discrimination based on ethnicity, religion, etc. (Anti-Discrimination Act); the Act (No. 38 of 2005) to amend the Act (No. 45 of 1978) respecting equality between the sexes, etc. (Implementation of Directive 2002/73/EC of the European Parliament and of the Council and incorporation into Norwegian law of the United Nations Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol); the Act (No. 40 of 2005) on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal (Anti-Discrimination Ombud Act); and Chapter 13 concerning protection against discrimination of the Act (No. 62 of 2005) relating to working environment, working hours and employment protection, etc. (Working Environment Act). The Committee notes that the Anti-Discrimination Act of 2005 prohibits and defines direct and indirect discrimination on the grounds of ethnicity, national origin, descent, skin colour, language, religion or belief, and prohibits harassment and instructions to discriminate on the basis of these grounds, as well as acts of reprisal. The Act also provides for positive action and the shifting of the burden of proof on the person allegedly

responsible for breaching the provisions of the Act. The Committee further notes the new provisions pursuant to the amendments to the Gender Equality Act of 1978 concerning the obligation of employers, organizations and institutions to prevent sexual harassment, the shared burden of proof and the objective liability for damages in cases of infringements of the law. Finally, it notes that Chapter 13 of the Working Environment Act prohibits direct and indirect discrimination on the basis of political views, membership of a trade union, sexual orientation, disability or age, as well as harassment and the instruction to discriminate on the basis of these grounds. With respect to discrimination based on gender, the Working Environment Act specifies that the Gender Equality Act will apply and, with respect to discrimination on the basis of other grounds, the Anti-Discrimination Act will apply. The Working Environment Act further provides for protection against discrimination in all aspects of employment and contains provisions on the burden of proof and preferential treatment. ***The Committee asks the Government to provide information in future reports about the application in practice of the Gender Equality Act, the Anti-Discrimination Act, the Working Environment Act and the Anti-Discrimination Ombud Act.***

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

## Pakistan

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)***

1. Noting that the Government's brief report provides very little information in reply to the specific requests for information made by the Committee concerning a number of matters, the Committee once again draws the Government's attention to a number of issues that would need to be further examined and addressed with a view to ensuring the application of the Convention, in law and in practice.

2. The Committee previously noted that the Minimum Wage Ordinance, 1961, provides for minimum wages for the different categories of workers in industrial undertakings without distinction on the ground of sex. It contains, however, no specific provisions on equal remuneration for men and women for work of equal value. The Committee also recalls that the 2005 Labour Protection Policy commits the Government to making gender equality with regard to pay and wage systems a key component of the new policies concerning conditions of work. The Policy further states that minimum wages and above-minimum wages will be paid on the basis of equal pay for equal work, and equal pay for work of equal value, as between men and women.

3. The Committee observes that while minimum wage setting is an important means to promote equal pay for women and men, appropriate measures must be taken to ensure that the principle of equal remuneration for men and women for work of equal value is effectively taken into account in the minimum wage setting process. Where different minimum wage rates are set for different occupations or categories of workers, it is particularly necessary to have safeguards in place to ensure that work predominately performed by women is not undervalued as a result of gender bias. This is necessary to 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 draws the Government's attention to its 2006 general observation which elaborates further on this issue. In addition, the Committee is concerned about the application of the Convention's principle in sectors in which the minimum wage legislation does not apply, including in the agricultural sector, and with respect to wages which are above the minimum level.

4. The Committee considers that the Labour Protection Policy illustrates the Government's commitment with regard to promoting equal remuneration for men and women, but that it now needs to be followed up by concrete action to promote and ensure the full application of the Convention's principle in law and in practice. The Committee considers it particularly important that an appropriate legal framework be put in place. Awareness raising and training on the meaning of the principle of equal remuneration as defined in the Convention are also essential.

5. ***In relation to the above, the Committee asks the Government:***

- (a) ***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, as envisaged under the Labour Protection Policy;***
- (b) ***to initiate preparations for the enactment of provisions providing for the general application of the principle of equal remuneration for men and women for work of equal value, as envisaged by Paragraph 3 of the Equal Remuneration Recommendation, 1951 (No. 90), and to provide information in its next report on the steps taken to this end;***
- (c) ***to provide information on any awareness-raising and training activities carried out to promote a full understanding of the meaning and the implications of the Convention's principle among relevant government officials, as well as workers' and employers' organizations.***

6. ***Enforcement.*** In its previous comments, the Committee asked the Government to provide information on the specific measures taken by the competent authorities to ensure the application of the principle of equal remuneration for work of equal value and on the mechanisms and procedures available for victims of pay discrimination. In this regard, the Government indicated that effective inspection services were working under the auspices of the Directorate of Labour

Welfare at the provincial level to enforce the Convention. In addition, the labour courts were able to redress grievances relating to unequal treatment. ***The Committee asks the Government to provide detailed information on any cases relating to the principle of equal remuneration for men and women for work of equal value dealt with by the labour inspection services or the labour courts.***

7. ***Objective job evaluation.*** The Committee notes that the information provided by the Government concerning the application of *Article 3 of the Convention* relates to the appraisal of the performance of individual civil servants, rather than to objective job evaluation within the meaning of *Article 3*. The Committee recalls that objective job evaluation, as envisaged under this Article of the Convention, refers to the analysis of the content of specific jobs or positions on the basis of objective criteria. ***Recalling that objective job evaluation is an important tool to ensure that remuneration rates are determined in accordance with the principle of equal remuneration for men and women for work of equal value, the Committee asks the Government to state what methods have been adopted to promote the objective evaluation of jobs on the basis of the work performed in the private and public sectors.***

8. ***Cooperation with workers' and employers' organizations.*** The Committee previously noted that the Government closely cooperated with workers' and employers' organizations in the preparation of the Labour Protection Policy, 2005. ***It asks the Government to provide information on how it is seeking the cooperation of workers' and employers' organizations in the follow-up to the elements on equal remuneration set out in the Labour Protection Policy with a view to achieving their full implementation.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)***

1. The Committee notes that the Government's brief report contains very little information concerning the issues raised by the Committee in its previous observation. ***The Committee requests the Government to ensure that its next report provides full information on all the pending issues, as set out below.***

2. ***Export processing zones (EPZs) and special industrial zones (SIZs).*** The Committee recalls that it has been commenting for a number of years on the need to adopt appropriate labour laws applicable to EPZs and SIZs which protect workers in these zones from discrimination. ***Noting that the report contains no information concerning this matter, the Committee urges the Government to ensure that workers in EPZs and SIZs are protected against discrimination. The Committee reiterates its request to the Government to provide information in its next report on any progress made in the preparation of the labour legislation applicable to EPZs and SIZs and the measures taken to ensure that it will reflect fully the principles and objectives of the Convention.***

3. ***Discrimination on the basis of sex.*** The concerns expressed by the Committee regarding women's equality of opportunity and treatment in employment and occupation in its previous observations related to the low literacy rate among women, the low school enrolment rates of girls and the high incidence of girls dropping out of school before completing primary education, particularly in rural areas, as well as the segregation in training and employment between men and women. The Committee notes that the Committee on the Elimination of Discrimination against Women, in its concluding observations of 11 June 2007, also expressed concerns over the continuing low representation of women in government service, including the judiciary, and the discrimination faced by women in the formal labour market, as reflected in their high unemployment rates, the gender wage gap and occupational segregation. It was also concerned that women in the informal economy, e.g. homeworkers, lacked protection under the labour laws and recommended ratification of the Home Work Convention, 1996 (No. 177) (CEDAW/PAK/CO/3, 11 June 2007, paragraphs 32, 36 and 38). ***Recalling that the elimination of discrimination against women and ensuring their equal employment opportunities are objectives under the Government's Labour Policy 2006 and an objective of the Decent Work Country Programme, the Committee requests the Government to provide information on the following:***

- (a) the specific measures taken or envisaged to promote women's equal employment opportunities and to eliminate discrimination on the basis of sex, including measures taken in the context of the ILO technical cooperation project "Women's employment concerns and working conditions", as well as any relevant activities of the National Commission on the Status of Women;***
- (b) the measures taken to increase the participation of girls and women in education, particularly in rural areas, and on action taken to change social attitudes that prevent them from enjoying their equal rights to education;***
- (c) detailed statistical information on the labour force participation of women and men, both in the public and private sectors, as well as on the level of participation of men and women in various fields of education and training;***
- (d) indications concerning measures taken to provide labour protection to women in the informal economy, including whether any consideration is being given to ratifying Convention No. 177.***

4. The Committee notes that no information has been provided in reply to the Committee's previous comments concerning the issue of sexual harassment. However, the Committee notes that the Government in its most recent report under the Convention on the Elimination of All Forms of Discrimination against Women referred to several studies indicating that sexual harassment appears to be widespread. The Government also indicated that the Ministry of Women's

Development had initiated work on a code of conduct for gender justice which aims at creating a working environment free from sexual harassment (CEDAW/PAK/1-3, 3 August 2005, paragraphs 539 and 542). ***The Committee urges the Government to take measures to prohibit and prevent sexual harassment at work, in law and in practice, and to keep it informed in this regard. In particular, the Committee reiterates its request to the Government to provide information on the steps taken with a view to preparing and adopting the code of conduct on sexual harassment.***

5. *Discrimination on the basis of other grounds.* Recalling its previous comments concerning the need to ensure that the national policy to promote equality of opportunity and treatment required under *Article 2 of the Convention* addresses discrimination on all the grounds specified in the Convention, the Committee notes that the Government merely indicates, as it had already in previous reports, that a special quota system for the employment of minorities and a National Commission for Minorities had been established. The Committee notes that on the basis of the information currently at its disposal, it is not in a position to assess how the Convention is applied in Pakistan with a view to promoting equal opportunities of members of minority groups, such as religious minorities, and in tribal areas. ***The Committee, therefore, urges the Government to provide more detailed information on the operation of the quota system to which it has been referring and its impact on the employment situation of minorities. The Government is also requested to provide information on any other schemes or programmes promoting their equality of opportunity and treatment in employment and occupation, including action taken by the National Commission for Minorities in this regard. Please also provide statistical information indicating to what extent members of the various minorities participate in private and public sector employment.***

6. The Committee also recalls its long-standing comments concerning the impact of certain provisions of the Penal Code (sections 295C, 298B and 298C) on the employment and occupation of members of certain religious minority groups, as well as the discussions of the ILO Conference Committee on the Application of Standards on this matter. The Committee recalls that sections 298B and 298C of the Penal Code establish sentences of imprisonment for up to three years for any members of the Qadiani and Lahori groups (which refer to themselves as Ahmadis) who, inter alia, preach or propagate their faith, whether by spoken or written words, or by visible representation. The Committee also recalls that in order to obtain a passport, a declaration is required to the effect that the founder of the Ahmadi movement was a liar and an impostor, which is designed to prevent non-Muslims from obtaining passports which identify them as Muslims. The Committee considers that these measures are unacceptable as their application necessarily impairs the enjoyment of equality of opportunity and treatment in respect of education and employment for certain religious minorities. In its report, the Government states that the laws concerned had been passed by Parliament and that non-Muslims such as the Qadiani and Lahori enjoyed their civil rights to the same extent as Muslims. ***While noting this statement, the Committee is bound to again strongly urge the Government to take the necessary steps to review these measures, and to keep the Committee informed of any action taken in this regard.***

## Panama

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)***

1. *Article 1 of the Convention. Work of equal value.* In its previous comments, the Committee asked the Government to give legislative expression to the principle of equal remuneration for men and women for work of equal value by amending section 10 of the Labour Code, under the terms of which “equal wages shall be paid for equal work in the service of the same employer, performed in the same job, working day, conditions of efficiency and seniority”, with a view to improving the application of the Convention. The Committee recalls that this section contains provisions that are more restrictive than the principle of equal remuneration for work of equal value, as it is limited to guaranteeing equal remuneration for equal work. In its report, the Government indicates that it disagrees with the views of the Committee of Experts and does not see any inconsistency between section 10 of the Labour Code and the principle set out in the Convention. The Committee considers that the difficulties relating to the application of the Convention in law and practice arise in particular from this lack of understanding of the scope and implications of the concept of work of “equal value”.

2. The Committee, therefore, draws the Government’s attention to its general observation of 2006, in which it clarifies the meaning of “work of equal value”. The Committee reminds the Government that, as indicated in paragraph 3 of its general observation, in order to address occupational segregation, “where men and women often perform different jobs, under different conditions, and even in different establishments, the concept of ‘work of equal value’ is essential, as it permits a broad scope of comparison. ‘Work of equal value’ includes but goes beyond equal remuneration for ‘equal’, the ‘same’ or ‘similar’ work, and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value.” In paragraph 6 of the general observation, the Committee indicates that “several countries still retain legal provisions that are narrower than the principle as laid down in the Convention, as they do not give expression to the concept of ‘work of equal value’, and that such provisions hinder progress in eradicating gender-based pay discrimination against women at work.” ***The Committee, therefore, urges the Government: (a) to amend section 10 of the Labour Code by including the principle of equal remuneration for work of equal value; (b) to take the necessary measures to clarify the meaning of this principle with the authorities and with workers’ and employers’ organizations; and (c) to provide information in this respect.***

The Committee is raising other matters 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 Employee Organizations (FENASEP) dated 17 April 2007, which was forwarded to the Government on 24 May 2007. The Committee notes that the communication from FENASEP refers to cases of discrimination based on pregnancy. The Committee also notes the Government's reply to this communication received on 20 November 2007.

1. *Discrimination on political grounds.* In its previous comments, the Committee noted a communication from FENASEP in 2001, to the effect 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*. The Committee notes that, according to the Government's report, as a result of the mass dismissals, 444 public officials lodged appeals against their dismissals. It also notes the 33 decisions of the Administrative Service Appeals and Conciliation Board forwarded by the Government. The Committee notes in particular that, according to the report, many of the officials have been reinstated in their posts or appointed to other state institutions and others are gradually being reintegrated as a result of the work of the bipartite commission established for this purpose by the Ministry of Labour (MITRADEL) and FENASEP. ***The Committee hopes that the bipartite commission will continue its efforts to find appropriate solutions in the cases of the remaining workers who were dismissed and requests the Government to provide information in this respect.***

2. *Legislation. Administrative service.* The Committee notes that, according to the Government, the previous administration suspended the administrative service. The Government states that it reinstated the administrative service to integrate public officials in the system in order to protect the public service from the pressures of party politics and provide employment stability. ***The Committee requests the Government to provide more detailed information on how the administrative service ensures the stability of employment of public officials and their protection against discrimination on political grounds. Please also provide the information on other measures taken to fully guarantee protection against political discrimination in the public sector.***

3. *Gender-based discrimination.* In its 2006 observation, the Committee examined the communication from FENASEP dated 7 October 2005 and sent to the Government on 19 January 2006. The communication referred to the dismissal of two pregnant women on temporary contracts employed in the public sector and the failure to renew their contract. In its previous observation, the Committee asked the Government to take the necessary steps to prevent discrimination on the ground of pregnancy. The Committee notes the communication from FENASEP received this year, which claims that the Government has not taken any steps to protect workers from discrimination based on pregnancy and, indeed, cases have continued to occur in which the contracts of pregnant women are not renewed. The Committee also notes that in reply to FENASEP's communication, the Government provides information on a case by case basis regarding progress made in resolving these matters. ***While noting the positive steps taken by the Government to resolve the individual cases, given the recurrence of such cases, the Committee continues to consider that as part of its policy on equality, measures are needed to ensure that women on temporary contracts are not placed in situations where they are vulnerable to discrimination because of pregnancy and asks the Government to keep it informed of progress made in this regard. The Committee asks the Government to supply information on the legislation and measures adopted or planned to prevent discrimination based on pregnancy.***

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

## **Peru**

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1960)***

1. *Equal remuneration for men and women for work of equal value.* In its previous comments, the Committee referred repeatedly to the need to give effect in legislation to the principle of equal remuneration for work of equal value set out in the Convention. In its last observation, the Committee also expressed regret that Bill No. 1110, which proposed the amendment of article 24 of the Political Constitution of Peru to include a second clause drafted to read "a worker, male or female, is entitled to equal remuneration for equal work performed under identical conditions for the same employer", had been submitted to the Congress of the Republic for its opinion. The Committee reiterated that this principle is far more restrictive than the principle set forth in the Convention as it requires conditions of "equal work", "performed under identical conditions" and "for the same employer". The Committee welcomes the fact that, according to the Government's report, article 24 of the Constitution has not been amended and that, were an amendment to that article to be proposed, it would have to take into account the provisions of the Convention. ***The Committee asks the Government to keep it informed regarding the status of the process of constitutional reform.***

2. The Committee notes with satisfaction that Act No. 28983, the Act respecting equality of opportunity for men and women, of 12 March 2007, sets forth in section 6(b) the principle of equal remuneration for work of equal value. The Committee expresses its confidence that the inclusion of this principle in the legislation will open the way towards a more complete and integrated application of the Convention and that it will also provide a basis for a revaluation of the work

performed by women in sectors considered to be traditionally feminine. This new legislative measure is in line with the comments made by the Committee in paragraph 6 of its general observation of 2006, stressing the importance of giving legal expression to the concept of “work of equal value”. Such legislation should not only provide 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 asks the Government to provide information on the practical application of section 6(b).*

3. While acknowledging that section 6(b) of Act No. 28983 is an important step in applying the principle of equal remuneration for work of equal value, the Committee notes that the provision alone is limited in its impact, as it provides only a framework for the executive branch of government and regional and local government in formulating their policies, plans and programmes. *The Committee asks the Government to indicate the measures taken or envisaged pursuant to section 6(b) of Act No. 28983 to apply the principle of equal remuneration for work of equal value, including whether any specific employment legislation is foreseen in this regard, and to keep the Committee informed of any progress made.*

4. *Other means of applying the principle laid down in the Convention. The Committee once again asks the Government to promote the objective evaluation of jobs on the basis of the work to be performed and to provide information on this subject. It also requests information on other means of applying the principle laid down in the Convention, including information on the manner in which the Government cooperates with employers’ and workers’ organizations to give effect to the provisions of the Convention.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1970)**

*Equality between men and women workers.* The Committee notes with interest the adoption of Act No. 28983, the Act respecting equality of opportunity for men and women, of 12 March 2007, the objective of which is to establish a legal, institutional and public policy framework at the national, regional and local levels to guarantee men and women the exercise of their rights to equality, dignity, freedom of development, welfare and independence, thereby preventing discrimination in all areas of their public and private lives. It notes that, under the terms of section 6(f), national, regional and local governments in all sectors, when adopting policies, plans and programmes, are under the obligation to “guarantee the right to productive work, exercised under conditions of freedom, equity, security and human dignity, including measures intended to prevent any type of discrimination at work between men and women in access to employment, training, promotion and working conditions, and identical remuneration for work of equal value. Work-related rights include protection against sexual harassment and the harmonization of family and work-related responsibilities”. *The Committee requests the Government to provide information on the policies, plans and programmes adopted to give effect to this Act and on its application in practice.*

## **Philippines**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)**

1. *Article 1(b) of the Convention. Work of equal value.* For a considerable number of years, the Committee has been asking the Government to bring its legislation into conformity with the Convention. The Committee had noted in this regard that section 5(a) of the 1990 Rules implementing Republic Act No. 6725 of 12 May 1989, which defined work of equal value to be “activities, jobs, tasks, duties or services ... which are identical or substantially identical”, appeared to restrict the application of the principle of equal remuneration for men and women workers to jobs which were essentially the same – a concept which was narrower than that required by the Convention. The Committee had further recalled that a proposed amendment of section 135(a) of the Labor Code provided for equal remuneration for men and women “for work of equal value whether the work or tasks are the same or of a different nature”. The Committee notes that in its reply the Government merely states that Republic Act (RA) No. 6727 (Wage Rationalization Act) and the Labor Code do not distinguish or differentiate between wages of men and women and that the minimum wages apply to all workers.

2. The Committee recalls its general observation of 2006 on this Convention in which it notes that:

... difficulties in applying the Convention in law and in practice result in particular from a lack of understanding of the scope and implications of the concept of “work of equal value”. ... “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 observation further noted that legal provisions that are narrower than the principle as laid down in the Convention hindered progress in eradicating gender-based pay discrimination against women at work because they do not give expression to the concept of “work of equal value”. *In line with its general observation, the Committee urges the Government to take the necessary steps to amend its legislation so 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 further reiterates its request to the*

**Government to provide information on the measures taken to apply, in practice, the principle of equal remuneration between men and women for work of equal value where women and men carry out different work.**

3. *Article 3. Objective job evaluation.* For a number of years the Committee has been asking the Government to provide information on any methods available which permit objective evaluation of jobs in accordance with *Article 3(1)* of the Convention. The Committee noted in the past that the Department of Labor and Employment (DOLE) was developing such methods. The Committee regrets to note that the Government's report continues to omit information in this regard. The Committee refers to its general observation on this Convention which states that:

... in order to establish whether different jobs are of equal value, there has to be an examination of the respective tasks involved. This examination must be undertaken on the basis of entirely objective and non-discriminatory criteria to avoid an assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, it does presuppose the use of appropriate techniques for objective job evaluation (*Article 3*). ... Whatever methods are used for the objective evaluation of jobs, particular care must be taken to ensure that they are free from gender bias.

4. **The Committee urges the Government to take measures to promote an objective evaluation of jobs free from gender bias taking into account the guidelines provided in its general observation of 2006. The Committee also asks the Government to supply information on any initiatives taken by the workers' and employers' organizations to determine wages on the basis of an objective evaluation of jobs.**

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)**

1. *Article 1 of the Convention. Lack of protection against discrimination in hiring.* For a considerable number of years, the Committee has expressed concern over the lack of legislative prohibition of discrimination against women in hiring and the overly broad interpretation of inherent requirements of the job. It had noted in particular that section 135 of the Labor Code continued to provide that "favouring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sex" is unlawful discrimination. The Committee notes that section 135 still does not include a prohibition for such favourable treatment in the hiring of men over women on account of their sex. The Committee further notes the Government's reply that the Philippine Constitution provides that the State shall ensure fundamental equality before the law between men and women and promote full employment and equality of employment opportunities for all. The Government further indicates that Republic Act (RA) of 12 May 1989 No. 6725 prohibits discrimination based on sex against women employees with respect to terms and conditions of employment, or favouring a male over a female employee. The Committee recalls that, pursuant to *Article 1(3)* of the Convention, discrimination on the basis of sex should be prohibited with respect to access to employment and occupation (including hiring), vocational training and terms and conditions of employment. While noting the Government's explanations concerning the applicable constitutional provisions and RA No. 6725, the Committee remains concerned that the national legislation concerning equality and non-discrimination continues to contain a legal vacuum with respect to the protection against discrimination of women in hiring. **The Committee again urges the Government to take the necessary legal steps to ensure that women are fully protected against discrimination in all aspects of employment in conformity with the Convention not only with respect to terms and conditions of employment, training and education opportunities and job security, but also in hiring practices. Awaiting any legislative changes, the Committee also requests the Government to provide detailed information on the measures taken or envisaged to prevent and address discrimination against women in hiring and the results achieved.**

2. *Failure to provide the information requested.* For a considerable number of years the Committee has been asking the Government to provide information on a number of points raised in previous requests. These concern in particular: (i) the application of the Convention in the public service; (ii) the practical application of resolution No. 98-463 banning discrimination on the basis of gender, religious or political affiliation, minority or cultural extraction or social origin in respect of employment and occupation; and (iii) the status of Bill No. 119 providing for a comprehensive enforcement machinery of non-discrimination against women. **The Committee refers to its direct request and trusts that the Government's next report will contain full particulars on the matters raised above.**

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

## **Romania**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)**

1. *Discrimination based on political opinion – inherent requirements of the job.* In its previous observation, 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 notes that the

Government's report contains no information in reply to this matter. *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 are excluded from the civil service on this basis.*

2. *Legislative developments.* The Committee notes that the legislative framework to combat discrimination has been further strengthened by Act No. 324 of 4 July 2006, which modifies and complements Government Order No. 137/2000. The amendments introduced new prohibited grounds of discrimination (age, disability, non-infectious chronic disease, and HIV/AIDS infection), as well as provisions on multiple discrimination, victimization, harassment, incitement, aggravating circumstances, and the burden of proof. In addition, the minimum and maximum fines have been increased. *With regard to the introduction of new prohibited grounds of discrimination, the Committee requests the Government to confirm that the Convention's coverage has been extended in accordance with Article 1(1)(b).*

3. The Committee notes that Act No. 324 also provides for a number of changes regarding the organization and procedure of the National Council for Combating Discrimination (NCCD). The Council is now established as an independent body under the control of Parliament. Other changes concern the composition, nomination, status and competence of the members of the Council's Steering Board. The new legislation also provides for the establishment of regional offices of the NCCD. As regards procedures, deadlines for the submission of complaints and for their conclusion have been introduced. Further, the NCCD will now be able to mediate.

4. The Committee further notes that Act No. 202/2002 on equal opportunities between women and men has been amended by Act No. 340/2006 of 17 July 2006 and, again, by Emergency Ordinance No. 56/2006 of 30 August 2006. The amendments, inter alia, strengthen the Act's provisions concerning discrimination based on pregnancy or maternity and improve the institutional set-up of the National Agency for Equal Opportunities between Women and Men (ANES).

5. *Enforcement.* The Committee recalls that monitoring and analysing discrimination complaints is an important means of assessing the effectiveness of the legislation and its enforcement mechanisms. It notes from the Government's report that 110 discrimination complaints related to employment and occupation were received by the NCCD in 2005 (out of a total of 382), 130 in 2006 (out of 432) and 215 in the first half of 2007 (out of 427). Between 2004 and mid-2007, violations of the anti-discrimination legislation were found in 41 cases, in eight of which fines were imposed, while in 33 warnings were issued.

6. As regards the grounds of discrimination, the Government's report indicates that from the beginning of 2006 to September 2007, the NCCD received 30 complaints regarding gender discrimination at work. In respect of 11 of these cases sanctions were imposed. According to the Government most of the gender discrimination cases before the NCCD related to discrimination in employment, e.g. refusal to offer employment based on age or pregnancy; retrograding because of pregnancy, dismissal in connection with pregnancy or sexual harassment (CEDAW/C/ROM/Q/6/Add.1, 28 March 2006, page 5). In the same 2005–06 period, 12 complaints were brought before the labour inspection services, some of them by the ANES. However, in only one of these cases was it found that discrimination had occurred. As regards judicial decisions regarding gender equality, the Government indicated that the Ministry of Justice had no data regarding cases at its disposal (*ibid.*, page 2). No information has been provided regarding cases of discrimination involving other prohibited grounds.

7. The Committee notes that the number of cases of employment discrimination dealt with by the NCCD and the labour inspection services remains low. The Committee also notes that no information has been provided by the Government on the number, nature and outcome of complaints involving prohibited grounds other than sex and that no information concerning court cases appears to be available. The Committee emphasizes the importance of collecting and publishing information concerning discrimination cases brought before the competent bodies, including the courts, that is comparable over time and that indicates the grounds of discrimination concerned. *The Committee requests the Government:*

- (a) *to step up its efforts to promote public awareness of the existing laws, procedures and mechanisms that can be invoked when discriminatory treatment occurs in employment and occupation, and to indicate the specific action taken in this regard. Please also indicate any measures taken to assist victims of discrimination, including members of the Roma community, to bring discrimination cases;*
- (b) *to indicate whether and how information concerning discrimination cases brought before the NCCD, the labour inspection services and the courts relating to employment and occupation are currently being collected and made available to the public, and to provide information concerning such cases in its next report, indicating the grounds of discrimination concerned as well as the outcomes of these cases.*

8. *Equality of opportunity and treatment in employment and occupation of the Roma.* The Committee notes the detailed information provided by the Government on the measures taken to promote equality of opportunity and treatment in employment and occupation of the Roma. The National Employment Agency continued to develop partnerships with the National Roma Agency, the prefectures, and non-governmental organizations in order to strengthen collaboration at the local level to draw up and adapt vocational training plans, taking into account actual and perspective labour market needs. The involvement of non-governmental organizations of the Roma in delivering employment services and active

labour market measures is expected to improve further the outcomes of action taken to promote access of the Roma to employment.

9. In its previous observation, the Committee noted two targets set by the Government: (1) to provide vocational training to at least 1,500 Roma per year; and (2) to achieve the employment of at least 10,000 Roma per year. According to the Government's report, the number of Roma participating in vocational training increased considerably from 202 in 2003 to 1,601 in 2005, thus reaching the target set, followed by a decrease to 1,204 in 2006. The Committee also notes that the second target is currently being met. In 2005 and 2006, a total of 10,366 and 13,810 persons of Roma origin have been employed, respectively. The information provided by the Government indicates that positive results were achieved mainly due to special programmes and initiatives targeting unemployed Roma, such as employment fairs and mobile campaigns reaching out to Roma communities.

10. The Committee welcomes the fact that the measures taken by the Government have continued to show positive results, as well as the involvement of Roma representatives and organizations in the design and implementation of the programmes carried out to promote access of the Roma community to employment and occupation. ***The Committee encourages the Government to continue to consolidate the progress made with a view to achieving sustained equality of opportunity and treatment of the Roma in respect of access to employment and occupation. The Committee requests the Government:***

- (a) ***to continue to provide detailed information on the measures taken in this regard and the results achieved, including statistical data, disaggregated by sex;***
- (b) ***to provide information not only on the number of Roma employed after having benefited from training or employment services, but also information on the actual retention and duration of the employment relationship; and***
- (c) ***to provide information on the measures taken to promote respect and tolerance between the Roma and members of other groups of the population, with a view to eliminating stereotypes and the discrimination that results from stereotypical attitudes.***

11. *Follow-up to the 1991 Commission of Inquiry.* The Committee recalls that it has been following up on Recommendation No. 6 (requests for medical examinations due to treatment received while in custody, made by persons who went on strike in 1987 and who have been subsequently rehabilitated by the courts) and Recommendation No. 18 (rebuilding of the houses destroyed as part of the systematization policy against certain minorities) of the report of the Commission of Inquiry (*Official Bulletin*, Volume LXXIV, 1991, Series B, Supplement 3).

12. With respect to Recommendation No. 18, the Committee notes that the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe, in its Second Opinion on Romania adopted on 24 November 2005, noted efforts by the Government to improve the speed of restitution of religious property confiscated during the Communist regime and to improve the legal framework relating to the restitution of properties confiscated during that period which had belonged to certain ethnic communities (ACFC/OP/II(2005)007, paragraphs 75–82). The Committee also notes that the Committee of Ministers of the Council of Europe recommended to the Government that they should accelerate the implementation of the restitution of religious and community property of minorities and to evaluate the effects of this process on the situation of vulnerable minority groups (resolution CM/ResCMN(2007)8 of 23 May 2007, paragraph 2). ***The Committee will continue to follow further developments regarding this matter.*** With regard to Recommendation No. 6, the Committee decided to close its follow-up due to lapse of time.

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 that despite repeated requests made by the Committee, the Government's report contains no statistical information concerning the earnings of men and women. The Committee reminds the Government that an analysis of the position and pay of men and women in all job categories within and between the various sectors is required to address fully the continuing remuneration gap between men and women which is based on sex. In order to permit an adequate evaluation of the nature, extent and causes of the pay differential between men and women and the progress achieved in implementing the principle of the Convention, the collection and analysis of the fullest possible statistical information, disaggregated by sex, on the earnings of men and women is crucial. ***The Committee, therefore, urges the Government to provide detailed 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. In addition, the Committee asks the Government to provide information concerning its own analysis of the evolution of the acknowledged gender pay gap.***

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

## ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1961)***

1. *Article 1 of the Convention. Prohibited grounds of discrimination.* The Committee notes with interest that the amendments of 30 June 2006 to the Labour Code included age as a new prohibited ground of discrimination in section 64 which prohibits “direct and indirect limitations whatsoever of rights or establishment of direct or indirect preferences when concluding a labour contract”. In addition, the ground of family status was added to the list of grounds mentioned in section 3 (“Prohibition of discrimination in the sphere of labour”). ***The Committee requests the Government to indicate whether these additional grounds have been determined in consultation with workers’ and employers’ organizations, in accordance with Article 1(1)(b) of the Convention. It also asks the Government to continue to provide information on the measures taken to eliminate discrimination in employment and occupation based on age and family status.***

2. *Enforcement.* The Committee recalls that under section 3 of the Labour Code persons considering themselves to be discriminated against in the sphere of labour previously had a choice to petition the labour inspectorate or to bring a court case. However, section 3 as amended on 30 June 2006, no longer provides for the possibility to petition the labour inspectorate. ***The Committee requests the Government to indicate the reasons for no longer allowing petitions to the labour inspectorate in relation to section 3, and the practical consequences for workers wanting to bring discrimination claims. Please also provide information on any other measures taken by the labour inspectorate to address workplace discrimination, as well as on any cases concerning discrimination in employment and occupation brought before the courts (number, facts, rulings, remedies provided and sanctions imposed).***

3. *Articles 2 and 3. Equality of opportunity and treatment of ethnic minorities and indigenous peoples.* The Committee recalls that the national policy to promote equality of opportunity and treatment in employment and occupation to be adopted and implemented under *Articles 2 and 3* of the Convention should address all forms of discrimination covered by the Convention. The Committee notes that the Government, despite repeated requests by the Committee, has not yet provided information on practical measures taken to promote and ensure equality of opportunity and treatment in employment and occupation irrespective of race, colour and national extraction. ***The Committee, therefore, requests the Government once again to provide such information in its next report. In this regard, please indicate the position in the labour market of the different ethnic minorities and indigenous peoples, including the measures taken to strengthen their access to training and employment.***

4. *Article 5. Special measures of protection.* The Committee notes that section 253 of the Labour Code, as amended on 30 June 2006, 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 Committee also notes that resolution No. 162, adopted by the Government on 25 February 2000 which contains the list of industries, occupations and work from which women are excluded, in accordance with section 253 of the Labour Code, appears to remain in force. According to the report, the resolution excludes women from 456 occupations in 38 sectors of industry. The Committee recalls that special protective measures for women which are based on stereotyped perceptions regarding their capacity and role in society violate the principle of equality of opportunity and treatment. The Committee also notes that protective measures should be limited to protecting the reproductive capacity of women, and should be proportional to the nature and scope of the protection needed. ***Recalling its repeated requests in this regard, the Committee once again requests the Government to supply a copy of resolution No. 162, in order to allow the Committee to examine this matter further. In addition, the Committee requests the Government to ensure that protective measures are limited to protecting the reproductive capacity of women and that those aimed at protecting women because of their sex or gender, based on stereotyped assumptions, are repealed. Please indicate in this context whether any steps are being taken to review the list established in resolution No. 162.***

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

## **Rwanda**

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1980)***

1. In its previous observation, the Committee commented on section 84 of the Labour Code which provides that equally competent workers carrying out the same type of work under the same conditions must be equally remunerated, without any consideration as to their origin, sex or age. Having noted that this provision was narrower than the principle of the Convention because it emphasized equal remuneration for the “same work” rather than for work of equal value as required by the Convention, the Committee asked the Government to indicate whether consideration was being given to amending section 84 to bring it into line with the Convention. In its report, the Government states that the draft Labour Code no longer provides for the provisions currently contained in section 84. The Government indicates that section 7 of the draft Labour Code, more generally, prohibits any discrimination based on sex in employment, including as regards remuneration.

2. The Committee observes that, while a general prohibition of discrimination based on sex in employment is important, it may not be sufficient in itself to ensure the full application of the principle of equal remuneration for men and women for work of equal value, as set out in the Convention. ***The Committee, therefore, urges the Government to ensure***

*that equal remuneration provisions in accordance with the Convention will be introduced into the Labour Code, giving full legislative expression to the principle of equal remuneration for men and women for work of equal value, and asks the Government to indicate the steps taken concerning this matter in its next report.*

3. The Committee recalls that violations of the current section 84 are not subject to penalties. *Emphasizing that without effective means of redress against sex-based discrimination in respect of remuneration the application of the Convention cannot be effectively promoted, the Committee asks the Government to ensure that the new Labour Code will contain equal remuneration provisions that are properly enforceable by the competent authorities.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)**

1. *Legislation. Grounds of discrimination and scope of protection.* Recalling its previous comments concerning section 12 of the Labour Code (Act No. 51/2001), the Committee notes the Government's statement that a draft Labour Code had been drafted, section 7 of which would replace section 12 of the existing law. According to the Government, the new section 7 of the draft Labour Code prohibits discrimination on all the grounds listed in *Article 1(1)(a) of the Convention* with respect to all stages of the employment process. *The Committee hopes that the revision of the Labour Code will introduce provisions on equality of opportunity and treatment in employment and occupation in accordance with the Convention, and encourages the Government to seek, in this regard, the assistance of the ILO. The Committee requests the Government to provide the text of the draft Labour Code to the Committee for examination.*

2. *Sexual harassment.* The Committee notes the Government's indication that section 16 of the draft Labour Code provides that a worker cannot be sanctioned for having been sexually harassed or for having objected to acts of sexual harassment by the employer, a representative of the employer or any other person abusing his or her authority. The same provision also protects workers who report sexual harassment. The Committee hopes that the new provisions on sexual harassment will not only address the protection of workers from reprisals, but also define and prohibit sexual harassment as such. The Committee urges the Government to have due regard to its 2002 general observation on sexual harassment for further guidance. *The Committee requests the Government to keep it informed of the steps taken to include appropriate provisions on sexual harassment in the Labour Code.*

3. *Application to the civil service.* The Committee notes that the Government's report refers to section 181 of the Constitution which envisages the establishment of a civil service commission as an independent national institution responsible for organizing an objective, impartial and transparent system for the selection of candidates. *Noting the observations made by the Congress of Labour and Brotherhood of Rwanda (COTRAF) according to which the civil service commission has not yet been established, the Committee requests the Government to provide full information on the establishment and functioning of this commission, including on the measures taken by it to ensure that recruitment to the civil service is free from discrimination.*

4. *Practical application.* In its previous comments, the Committee noted observations from workers' organizations concerning discrimination in practice on the grounds of sex, ethnicity, religion, political affiliation or social origin, despite the fact that the law prohibits such discrimination. In reply to the requests for information made by the Committee in this regard, the Government indicates that no cases of discrimination have been reported to the labour inspection services. No information was provided on whether and how the National Human Rights Commission, the Office of the Ombudsperson or the courts had addressed instances of discrimination.

5. The Committee emphasizes that prohibiting discrimination by law is an important element in ensuring the application of the Convention. However, a national policy to promote equality of opportunity and treatment in employment and occupation, as envisaged under *Article 2* of the Convention, also requires the Government to take specific measures to ensure that equality of opportunity and treatment can be enjoyed in practice. *In this regard, the Committee recommends that the Government examine whether the available administrative and judicial remedies are appropriate to address discrimination in employment and occupation, as well as any other obstacles for the detection and resolution of instances of discrimination in employment and occupation. In this context, the Committee recommends that awareness raising and training on equality issues be strengthened. The Committee requests the Government to provide detailed information on the measures taken or envisaged in this regard, indicating how the cooperation with workers' and employers' organizations and other appropriate bodies, such as the National Human Rights Commission, has been sought. The Committee also requests the Government to indicate any cases of discrimination in employment and occupation dealt with by the competent authorities.*

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

## **Saint Lucia**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)**

1. *Definition of remuneration.* The Committee noted previously that the Equality of Opportunity and Treatment in Employment and Occupation Act, 2000, which provides for equal remuneration for work of equal value, did not define the

term “remuneration”. The Government in response, points to the provision of the Act which provides that “equal remuneration” means rates of remuneration that have been established without differentiation based on the grounds of gender” (section 6(2)). While acknowledging the importance of this provision in applying the principle of the Convention, the Committee notes that it does not define “remuneration”, which pursuant to *Article 1(a) of the Convention*, is very broad, including “the ordinary, basic or minimum wage or salary, and 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”. ***The Committee 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 Article 1(a) of the Convention, and to provide any administrative or court decisions in this respect.***

2. *Different wage rates for women and men.* The Committee has been commenting for a number of years on the existence of legislation establishing different wage rates for men and women, which is clearly a violation of the Convention, and asking that all laws and regulations containing different wage rates for men and women be repealed. ***Regretting that the Government provides no information on this point, the Committee urges the Government to ensure that all laws and regulations containing differential wages for men and women are repealed. Recalling the Government’s previous indication that older legislation stipulating different wage rates for men and women would be revoked with the adoption of the new Labour Code, the Committee urges the Government to confirm its intention to adopt the new Code without delay. Please keep the Committee informed of progress in this regard, and forward a copy of the Code upon its adoption.***

3. *Contracts of Service Act and Factories Regulations.* In its previous comments, the Committee noted that there were different ages for men and women with respect to entitlement to severance pay pursuant to the Contracts of Service Act. It also raised concerns regarding the provisions of the Factories Regulations, which single out women and young boys for exclusion from certain jobs. The Government indicates that pursuant to the draft Labour Code, there would no longer be different ages for men and women with respect to entitlement to severance pay, but that the Factories Regulations remain in force. ***The Committee hopes that the Contracts of Service Act will be brought into conformity with the Convention soon, and asks the Government to consider amending the Factories Regulations Act, and to keep the Committee informed of steps taken in this regard.***

The Committee is raising other matters 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:

1. *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.

2. 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.

3. ***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)**

1. *Work of equal value.* In its previous observation, the Committee expressed its concern that the wording in section 119(3) of the previous Labour Code may not be completely in line with the principles enshrined in the Convention, notably as regards the notion of “the same working conditions, efficiency and results” which does not seem to reflect fully the concept of “work of equal value”. The Committee notes with interest the Government’s statement in its report that an amended version of section 119(3) of the Labour Code will guarantee “equal wage of men and women for equal work or for work of equal value”. The Committee notes that the new Labour Code has been promulgated and came into force in September 2007. ***The Committee hopes that the new Labour Code will now fully reflect the principle of the Convention and looks forward to receiving a copy of the Code. The Committee also recalls its previous comments regarding the definition of “wage” and refers to this point in its direct request.***

2. *Remuneration gap between men and women.* The Committee notes the statistical information provided by the Government on the average earnings of men and women in the year 2005, for which it is grateful. Relying on these data, the Committee observes that during 2005 there was a slight increase in the average wage of women as a share of men’s wage of 1.16 percentage points (from 76.34 per cent in 2004 to 77.5 per cent in 2005). Nonetheless, data show that a significant gap between women’s and men’s wages still exists with regard to all “age” and “employment” categories represented. In particular, the Committee notes that the highest wage gap can be found among legislators, managing and senior employees (38 per cent), along with tradespersons and qualified blue-collar workers in related fields (38 per cent), whereas the lowest gap is to be found among clerks (17 per cent) and skilled blue-collar workers in agriculture and forestry (15 per cent). When looking at average earnings according to age, statistics show that wage differences are the highest in the age category from 35 to 39 years of age (31 per cent), while they are the lowest in the age category from 20 to 24 years of age (14 per cent). ***The Committee again recalls the importance of increasing women’s participation in higher paid jobs, including through training courses. At the same time, while inviting the Government to explore measures to promote access of women to higher paid sectors and occupations, the Committee points out that female-dominated sectors and occupations must not be undervalued. It asks the Government to continue to provide statistical information, disaggregated by sex, on the earnings gap between men and women, and to keep it informed on any programmes, projects and measures adopted to reduce the remuneration gap between men and women and to promote women’s access to high-paid jobs, as well as their impact.***

3. *Collective agreements.* The Committee recalls its previous comments on the possibility of extending collective agreements under section 7 of Act No. 2/1991 Coll. on collective bargaining, as amended, and on the Government’s practice of not extending such collective agreements due to resistance of employers. The Committee also notes that the extension of binding effects of these collective agreements is decided upon by the Government in cooperation with the Tripartite Commission. The Committee recalls the General Survey of 1986 on equal remuneration which points out the possibility of giving general binding force to collective agreements as representing an important tool for the State in supervising the contents of collective agreements, particularly as regards the principle of equal remuneration (paragraphs 154 and 155). ***In the absence of relevant information in the Government’s report, the Committee invites the Government to provide information in its next report on any measures taken to raise awareness among the Tripartite Commission, and the social partners in general, about the importance of extending collective agreements to promote the principle of equal remuneration for men and women for work of equal value. Please also provide information on cases where clauses of collective agreements have been found to be in breach of the principle of equal remuneration for work of equal value and thus considered invalid pursuant to section 4(2)(a) of the Collective Bargaining Act.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)**

The Committee notes the Government’s report along with its statement before the Conference Committee on the Application of Standards in June 2006, as well as the Conference Committee’s conclusions.

1. *Implementation of legislation on discrimination in employment and occupation.* The Committee notes that section 13 of the Labour Code has been amended so as to incorporate the Anti-Discrimination Act of 2004, notably its stipulation on indirect discrimination. The Committee notes the information provided by the Government during the Conference Committee on the enforcement and the practical application of the anti-discrimination legislation. It also notes that the Conference Committee drew the attention of the Government to the need to ensure effective implementation of the legislation and requested it to provide full information on the practical application of the anti-discrimination legislation. In this respect, the Committee notes the information provided by the Government on the judicial decisions, and complaints dealt with by the Slovak National Centre for Human Rights, the Department of Equal Opportunities, the Ombud and the Labour Inspectorate. The Government has also taken measures to implement the Anti-Discrimination Act, such as adopting the action plan for the prevention of all forms of discrimination as well as educational activities and relevant projects. Nevertheless, the Committee notes that the Advisory Committee on the Framework Convention for the Protection of National Minorities in its second opinion on the Slovak Republic (ACFC/OP/II(2005)004) has pointed out

that the Anti-Discrimination Act still remains to be fully implemented and improvements are required in the area of monitoring so that the results of governmental policies can be assessed more effectively. *The Committee, therefore, hopes that the necessary steps to ensure the full implementation of the legislative framework on non-discrimination are taken as soon as possible. The Committee also asks the Government to monitor comprehensively all the activities and the impact of its policies and legislative measures in the field of non-discrimination in order to enable its own organs as well as this Committee to evaluate the concrete effects of the efforts so far made. The Committee would further appreciate receiving information on the activities carried out under the action plan and their impact, including copies of the surveys, studies and independent reports referred to in the Government's report.*

2. The Committee recalls its previous comments concerning section 8(8) of the Anti-Discrimination Act which provided for the possible adoption of specific positive measures with the aim of addressing disadvantages linked to race or ethnic origin. The Committee notes with concern that the Constitutional Court found this provision not to be in accordance with article 1(1) and article 12(1) and (2) of the Slovak Constitution. In the Court's view, by not specifying the contents and criteria governing the recognition of these measures, section 8(8) is in breach of the principle of legal certainty. Furthermore, according to the Court's ruling, such provision would not be compatible with the principle of equality since it would have established preferential treatment for the benefit of certain categories of people on an ethnic basis. *The Committee recalls that, pursuant to Article 5(2) of the Convention, special measures may be needed in order to promote effective equality, particularly of persons belonging to national minorities. The Committee asks the Government to indicate the steps taken to secure equality of opportunity and treatment of persons belonging to national minorities. The Committee also asks the Government to keep it informed of any developments and initiatives taken with a view to promoting the adoption of special measures to address past and present discriminatory practices based on race and ethnic origin.*

3. *Discrimination on the basis of race or national extraction.* The Committee recalls that the Conference Committee requested the Government to provide full information on the programmes and initiatives promoting equality in education and employment of the Roma, and also asked the Government to work with the social partners to develop a positive action plan aimed at achieving both formal and substantial equality for the Roma. In this respect, the Committee notes the number of programmes carried out by the Government, including the National Action Plan on Social Inclusion 2004–06 and the Social Development Fund Programme, to combat the social exclusion of the Roma community. It also notes that under these programmes in 2005 about 3,000 jobs were created for the Roma people and an increase by 6,000 jobs had been anticipated for 2006. Furthermore, the Committee notes the Framework agreement on Roma communities, aimed at securing real impact of the demand-driven projects on the improvement of the socio-economic status of the Roma communities, and the Sectoral Operational Programme Human Resources, incorporating provisions regarding the Roma communities' development. Nonetheless, the overall situation of the Roma minority seems to remain extremely serious and prejudices against persons belonging to Roma communities continue to be reported. In particular, apart from the negative effects on Roma communities of the 2004 reform of the social aid policy, the Committee observes that, according to the abovementioned second opinion on the Slovak Republic by the Advisory Committee on the Framework Convention for the Protection of National Minorities, the measures envisaged by the Government still remain to a large extent to be implemented, and in fact many Roma still face severe difficulties and discrimination in a number of areas, including access to employment and education. Moreover, the Advisory Committee has pointed out that the authorities need more precise data, particularly relating to access to employment, to ensure that policies and measures framed are effectively implemented. *The Committee asks the Government to intensify its efforts to promote equality of opportunity and treatment for the Roma communities and to create an environment of tolerance and intercultural dialogue. The Committee also asks the Government to continue to provide information on the programmes and measures taken along with information and data regarding their practical implementation and impact on the Roma communities, as well as data on employment of Roma people.*

4. *Equality of opportunity and treatment between men and women.* The Committee recalls that the Conference Committee requested the Government to provide full information on the implementation and impact of the gender equality programmes, statistical information on the employment and training of women and men and steps taken to ensure sustained follow-up and monitoring of the initiatives taken. It also requested the Government to work with the social partners to develop a positive action plan aimed at achieving both formal and substantive equality for women. The Committee notes with interest the detailed information provided by the Government on the measures and activities carried out with a view to achieving equality of opportunity and treatment for women. It also notes the document "Measures toward reconciliation of family and working life in the year 2006, with outlook until 2010", and in this context refers to its comments on the Workers with Family Responsibilities Convention, 1981 (No. 156). However, the Committee notes the lack of information as regards the practical effects of these and previous measures taken to facilitate access of women to training and employment. In particular, it notes that according to the Government's report several employers openly declared a lack of interest in hiring women, either generally or those older than 30 years of age. These cases were referred either to the Slovak National Centre for Human Rights or to labour inspectorates, but the complainants are reported to have been unable to provide any acceptable evidence that could be used as the basis for intervention by the competent authorities. *The Committee urges the Government to take steps to increase public awareness with respect to gender discrimination at work and women's rights in that respect. The Committee also requests that the Government provide information on the results achieved by previous and present projects carried out with respect to discrimination against*

women in the labour market and facilitating their access to a wider range of training courses and occupations. It further invites the Government to continue providing up to date information on labour market participation, disaggregated by sex, occupation and sector.

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

## Slovenia

### **Workers with Family Responsibilities Convention, 1981 (No. 156)** (ratification: 1992)

1. *Legislative developments.* The Committee notes with satisfaction that legislation adopted during the reporting period consolidates and strengthens the range of available protection and entitlements for workers with family responsibilities and, as requested by the Committee, guarantees them to women and men on an equal footing. The Committee notes in particular that the Employment Act (Act No. 42/2002) prohibits direct and indirect discrimination based on a number of grounds, including family status and “other personal circumstances” and prohibits the employer from requesting from job applicants information on family or marital status, pregnancy or family planning (sections 6 and 26). The Committee welcomes that the Act places a general obligation on the employer “to allow the workers easier adjustment of their family and business obligations” (section 187) and recognizes the right to special protection in employment due to pregnancy and parenthood. In cases of disputes concerning the exercise of such special measures of protection, the burden of proof is on the employer.

2. The Committee also notes the adoption of the Parental Care and Family Benefits Act (Act No. 110/2003), which has been amended by Act No. 47/2006. Under the Act, workers have the right to take maternity leave, paternity leave (up to 90 days), parental leave (260 days for one child, extendable 90 days for each additional child) on the grounds of birth or adoption, either on a full-time or part-time basis. During such leave, wage compensation is guaranteed. In addition, both parents have the right to work part-time until the child reaches the age of three. The Committee particularly notes that these entitlements are also available to self-employed parents, including independent workers, private company owners and farmers and that, during part-time work, the State compensates the worker for lost income up to the level of the minimum wage and covers social security contributions. *The Committee requests the Government to provide information on the practical application and enforcement of the abovementioned provisions of the Employment Act and the Parental Care and Family Benefits Act, including information on any relevant administrative or judicial decisions (facts, ruling and remedies provided or sanctions imposed).*

3. *Promotional measures.* The Committee welcomes that in addition to providing a legislative framework for the application of the Convention, the Government is implementing a number of measures to promote the Convention’s application in practice under the National Programme for Equal Opportunities for Women and Men which includes as a specific objective, the harmonization of professional and private life and family obligations. In this context, the Committee particularly notes that guidelines and recommendations for companies on measures for work–family reconciliation are currently being developed. In addition, an annual award competition for family friendly companies is under preparation. The Committee also notes that a study on the situation of single parents with regard to reconciliation of work and family obligations is being carried out. *The Committee requests the Government to continue to provide information on the implementation of these measures, including in particular on measures to raise awareness among workers and employers of the relevant laws and policies, and on the importance of adopting and implementing workplace policies to facilitate reconciliation of work and family responsibilities. Recalling that Article 11 of the Convention provides for the right of workers’ and employers’ organizations to participate in the design and implementation of measures giving effect to the Convention, the Committee requests the Government to provide information on how the social partners are being involved in these efforts.*

The Committee is raising other matters 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.* The Committee recalls its previous observation on section 6 of the Employment Equity Act prohibiting unfair discrimination on the ground of sex, including with respect to remuneration, in which it asked the Government both to indicate whether this section required equal remuneration for men and women for work of equal value, and to consider amending the Act so as to give full expression to this principle. The Committee notes that, according to the Government’s report, Chapter 2 of the Employment Equity Act is understood to encompass the principle of equal pay for work of equal value and it also applies to independent contractors, members of the South African Defence Force, the National Intelligence Agency and the South African Secret Service. The Committee further notes the Government’s statement that “consideration would be given to establish whether there is a need to include this area [equal pay for work of equal value] either in the Act or in the Regulations”. In that regard, the Committee recalls its 2006 general observation on this Convention urging governments to take the necessary steps to amend their legislation in order to provide for equal remuneration for men and women for work of equal value

(paragraph 6). *The Committee therefore asks the Government to consider amending the Employment Equity Act so as to provide expressly for equal remuneration for men and women for work of equal value. The Committee invites the Government to keep it informed on any development which may occur in that respect as well as to provide information on the application of the relevant provisions of the Employment Equity Act.*

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)

1. *Absence of conditions to ensure freedom from discrimination in employment and occupation.* The Committee recalls its previous comments concerning the insecurity and violence prevailing in Darfur and the impact on the application of the Convention to all parts of the population. The Committee notes the Government's reply that in May 2006, it concluded the Darfur Peace Agreement (DPA) with the largest rebel groups, and that even though difficulties continue to be encountered with these groups, the Convention is being implemented through the appointment of an Assistant to the President from the largest group that signed the DPA and by promulgation of a number of republican decrees giving effect to the Convention. While noting the explanations of the Government, the Committee is nevertheless disturbed by the report of the High-level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101 (A/HRC/4/80, 9 March 2007) indicating that the killings of and attacks on civilians, rape and sexual violence remain widespread, even after the signing of the DPA. It notes that the High-level Mission also condemns the ongoing repression of political dissent as well as the arbitrary arrests and detention of individuals, including lawyers, community leaders, teachers and business people, predominantly from the Fur, Masaalit and Zaghawa tribes. The Committee is deeply concerned that the harassment and arrest of individuals with opposing political views or who are members of these tribes result in excluding them from exercising their occupations on the basis of their political opinions and ethnic origin, in violation of the Convention. The Committee also remains deeply concerned over the absence of conditions in the Darfur region under which all parts of the population, irrespective of race, colour, national extraction, sex, religion, social origin and political opinion, can exercise their occupations free from discrimination. In the absence of further details on how the abovementioned and other measures taken or envisaged to give effect to the Convention are being implemented, the Committee cannot but deplore the absence of effective protection of the population of Darfur against discrimination in employment and occupation. The Committee further notes that one of the recommendations of the UN High-level Mission to the Government is "to move towards putting in place fair and equitable policies and programmes to reverse decades of long-standing discrimination and economic, political and cultural marginalization of the people of Darfur". *The Committee, therefore, asks the Government to take urgent measures to ensure that all men and women from Darfur can exercise their occupations free from discrimination, and to provide full information on the following points:*

- (a) *the manner in which measures such as the appointment of an Assistant to the President from the main group who signed the DPA and the promulgation of presidential decrees are promoting the principles of the Convention. Please also provide copies of these presidential decrees;*
- (b) *the measures taken to ensure that no individuals or members from certain ethnic groups, including the Fur, Masaalit and Zaghawa tribes, are excluded from exercising their occupations due to their political opinions or ethnic origin;*
- (c) *the policies and programmes put in place to reverse the ongoing discrimination of the people of Darfur and to promote their equal access to employment and occupation.*

2. *Article 1(1)(a) of the Convention. Prohibited grounds of discrimination.* The Committee notes the adoption in 2005 of the Interim Constitution of the Republic of the Sudan, article 31 of which provides equal protection of the law to all persons without discrimination as to race, colour, sex, language, religious creed, political opinion or ethnic origin, omitting social origin. While welcoming that the Interim Constitution has extended the prohibited grounds of discrimination, the Committee recalls that there is no legal provision, even in the 1997 Labour Code, specifically prohibiting discrimination in employment, occupation and training on the grounds set out in the Convention. *Recalling the importance of defining and prohibiting direct and indirect discrimination in employment and occupation in law on all the grounds contained in Article 1(1)(a) of the Convention, the Committee asks the Government to indicate whether it has any intention of supplementing the provisions of the Interim Constitution of 2005 and amending the 1997 Labour Code to include such a provision. The Government is also requested to indicate in future reports whether any complaints concerning discrimination have been made to the courts on the basis of article 31 of the 2005 Interim Constitution, and if so the nature and outcome of these complaints. The Government is also requested to provide information regarding how it is providing protection against discrimination on the basis of social origin.*

3. *Articles 2 and 3. Formulation and implementation of a national policy on equality and measures to correct inequalities that may exist in practice.* The Committee recalls its previous request to the Government to take the necessary measures pursuant to Article 3(a), (b), (c) and (d) of the Convention. It notes the information provided by the

Government concerning the functions of the Federal Committee of Manpower, the strategy of the Ministry of Education and of the High Council for Vocational Training. The Committee regrets, however, that this information remains very general and does not specify the particular measures and programmes implemented to promote equality and to correct de facto inequalities that may exist in training, employment and conditions of work. **The Committee, therefore, 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 ensure and promote the principle of equality of opportunity and treatment, but also to ensure that no inequalities exist nor discrimination practised on any of the grounds set out in the Convention.**

4. *Equality of opportunity and treatment between men and women.* The Committee recalls its concern over the Public Order Act of 1996, which provides for the flagellation or lashing of women for wearing allegedly indecent dress or for being out in the street after dusk. The Act violates women's human rights and seriously restricts their freedom of movement, and has thus a negative impact on their free choice of employment and occupation. **In the absence of any information in the Government's report, the Committee reiterates its previous request for a copy of the Public Order Act of 1996 so that it can be assured that the Act does not contain any provision that violates the principle of equality between men and women in employment and occupation.**

5. *Article 3(c). Equality of access to training and jobs.* The Committee notes the Government's statement that work was suspended with respect to the Passports and Immigration Act, 1970, which requires the approval of the husband or guardian in order for a woman to travel abroad. **The Committee would be grateful if the Government could provide more specific information in its next report as to whether a woman must still obtain the approval of her husband or guardian in order to travel abroad for professional or educational reasons.**

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)**

*Article 2 of the Convention. Equality of opportunity and treatment on the basis of race, colour and national extraction.* For a number of years, the Committee has been asking the Government to provide information on the labour market and employment situation of certain ethnic minorities in Swaziland, in particular the Zulu from the former KwaZulu-Natal and the Tonga. The Committee regrets to note that the Government has once again failed to provide the requested information and merely refers to the provisions relating to citizenship in the Constitution of Swaziland, namely that all Swazi born in or outside Swaziland are citizens of the country and cannot be discriminated against on the basis of race, colour and national extraction. The Committee reminds the Government that the Convention protects both citizens and non-citizens against discrimination on the basis of all the grounds enumerated in the Convention, including race, colour and national extraction. The Government is obliged under the Convention to declare and pursue a national policy on equality of opportunity and treatment with respect to all the grounds covered by *Article 1(1)(a)* of the Convention, and to take active measures to implement that policy in accordance with *Article 3* of the Convention. **The Committee urges the Government to provide full particulars in its next report on the following:**

- (a) *the employment situation of the ethnic minorities in the country, particularly the Zulu from the former KwaZulu-Natal and the Tonga;*
- (b) *the concrete measures taken or envisaged to protect citizens and non-citizens in law and in practice against discrimination based on race, colour and national extraction in employment and occupation.*

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

## Sweden

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1982)**

*Legislative developments.* The Committee notes Act No. 439 of 2006 to amend the Employment Protection Act (No. 80 of 1982). According to section 11 of this Act, in cases where an employer dismisses staff because of a lack of work, employees on parental leave at the time of such dismissals may not be given notice of termination during their leave period, but only upon returning from leave. In addition, the Committee notes with interest Act No. 442 of 2006 to amend the Parental Leave Act (No. 584 of 1995). It notes in particular section 16, which prohibits the unfair treatment of employees or job applicants for reasons connected with parental leave, including with regard to working conditions, wage setting or work supervision. The Committee also notes that under section 17, a worker cannot be dismissed for exercising his or her rights to parental leave under the Act. Should a dispute arise relating to unfair treatment as prohibited by the Act, the Equal Opportunities Ombudsman (EOO) may now bring an action before the Labour Court on behalf of an individual employee or job applicant. **The Committee welcomes these developments and asks the Government to provide**

*information on the practical application of these new legislative provisions including cases brought by the EOO before the Labour Court, and on their outcomes.*

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

## **Syrian Arab Republic**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1957)**

1. *Article 2 of the Convention. Application in practice of the principle of equal remuneration for work of equal value.* Over the past few years, the Committee, while taking due note of the information provided by the Government that wages were determined by non-discriminatory laws, rules and regulations, has stressed the importance of also addressing wage inequalities between men and women that may exist in practice. The Committee notes that the Government in its most recent report, again merely points to the applicable legislation and wage scales, and states that there are no wage disparities between men and women and that no complaints have been submitted relating to unequal pay. The Government's report also continues to omit information on the concrete measures taken to determine whether inequalities in remuneration exist in practice between men and women, especially when they are performing work that is of an entirely different nature, but nevertheless of equal value.

2. The Committee draws the Government's attention to the fact that difficulties in applying the Convention in law and in practice result, in particular, from a lack of understanding of the underlying factors contributing to wage inequalities, and of the scope and implications of the concept of "work of equal value". The Committee recalls that inequalities in remuneration may be the result of a number of factors, including less career-oriented education, training and skills levels for women; horizontal and vertical occupational segregation of women into lower paying jobs or occupations; and to the fact that household and family responsibilities are still primarily borne by women. The Committee refers the Government to its general observation of 2006 on this Convention, which clarifies the meaning of the concept of "work of equal value", and which explains some of the underlying causes of unequal remuneration between men and women that may exist in practice. In its observation, the Committee highlights, for example, the fact that historical attitudes towards the role of women in society, along with stereotypical assumptions regarding women's aspirations, preferences, capabilities and "suitability" for certain jobs, have all contributed to occupational sex segregation in the labour market. As a result, certain jobs are held predominantly or exclusively by women and others by men. These views and attitudes also tend to result in the undervaluation of these "female jobs" in comparison with jobs held by men who are performing different work and using different skills, when determining wage rates. ***The Committee urges the Government to undertake the necessary studies to determine the nature, extent and causes of any inequalities in remuneration that may exist in practice between men and women for work of equal value in the public and private sectors, and to identify specific measures to address these inequalities. The Committee hopes that the Government will make every effort to take the necessary action in the very near future, and provide information on the progress made in its next report.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)**

1. *Articles 2 and 3 of the Convention. Failure to provide sufficient information to assess the progress made in applying the provisions of the Convention.* In its past observations, the Committee has been raising doubts about the satisfactory application of *Articles 2 and 3* of the Convention. It has pointed out that the lack of information in the Government's report on concrete measures taken to promote and ensure equality of opportunity and treatment in employment and occupation, inhibited an adequate assessment by the Committee of progress achieved in applying the provisions of the Convention on the basis of all the grounds set out in the Convention.

2. The Committee notes that the Government, in its most recent report, continues to refer to the relevant legislation applying the Convention. The Government further lists a number of measures taken, such as the annulment of the economic security courts, the establishment of the National Committee for International Human Law, and, in 2005, the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the establishment of the Syrian Agency for Family Affairs. The Committee notes these measures but regrets that the Government's report does not provide any further information on how these measures, and any other measures taken, have in fact contributed to promoting and ensuring the principle of equality of opportunity and treatment in employment and occupation, in particular with respect to the grounds of discrimination other than sex set out in the Convention. Further, the Government continues to omit full particulars on the action taken to pursue a national policy on equality of opportunity and treatment with respect to the grounds of race, colour, national extraction, religion, political opinion and social origin (*Article 3(f)*). ***The Committee therefore strongly urges the Government to provide full information in its next report on the following:***

- (a) the concrete action taken or envisaged to pursue a national policy on equality of opportunity and treatment with respect to the grounds of race, colour, national extraction, religion, political opinion and social origin, and the results achieved through such action;***

- (b) *the measures taken to increase the knowledge and understanding, including among ethnic minority Kurds and Bedouins, of the objectives of the Convention and of the legal provisions providing for equality of opportunity and treatment in employment and occupation;*
- (c) *the measures taken, through surveys or otherwise, to undertake an evaluation of the effectiveness of the complaint procedures, including any practical difficulties encountered by women or men, including ethnic minority Kurds and Bedouins, in seeking judicial remedies with regard to cases of discrimination on the basis of all the grounds covered by the Convention.*

3. *Access of women to employment and occupation.* The Committee notes from the information in the Government's report that the number of female judges, while increasing, remains low, and that women represent only 14.47 per cent of the total number of state lawyers. Furthermore, the statistics for 2004 on the distribution of men and women by economic activity and salary groups, indicate that women continue to be concentrated in the agriculture and forests activities, primarily in cooperatives and collectives (47 per cent) and the private sector (49.5 per cent); and in services mainly in the public sector (92.5 per cent) but also in the private sector (19.5 per cent). The Committee notes from the Government's report on the Equal Remuneration Convention, 1951 (No. 100), that one of the expected outcomes of the five-year plan (2006–10) is to contribute to poverty alleviation through raising women's educational level and increasing women's participation in economic activity. The Government also indicates that the plan provides for awareness-raising activities on gender equality and the amendment of legislation concerning gender and women. ***The Committee asks the Government to indicate in its next report the progress made and results achieved under the five-year plan (2006–10) to improve women's participation in a wider variety of occupations in the public and private sectors, and to increase their numbers in management and decision-making posts as well as in the judiciary. Please also indicate any legislative steps taken or contemplated to improve equality between men and women and, in particular, in employment and occupation.***

4. *Access of women to vocational training and guidance.* With respect to its previous observation regarding women's access to vocational training, the Committee notes that the Government refers to a number of strategies relevant to promoting the access of women to vocational training. The strategies include, among others: (i) a direct new education policy to serve the labour market and put an end to unemployment; (ii) defining available options for job opportunities in the private sector; and (iii) coordinating activities with various training institutes to meet the needs of the various sectors of the economy. The Committee further notes the statistics attached to the Government's report on the attendance of students in vocational education, which are unfortunately either difficult to read or not disaggregated by sex. ***In order for the Committee to be able to assess the progress made in the application of the Convention, it asks the Government: (i) to indicate in its next report the impact of the general educational strategies on women's access to vocational training and education, including their participation in training courses primarily attended by men; and (ii) to provide clear statistics disaggregated by sex on the participation of women and men in the various training courses and vocational training centres.***

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

## Trinidad and Tobago

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)***

1. *Collective agreements.* The Committee recalls its previous comments concerning wage differentials contained in some collective agreements between workers and public sector employers, such as the Port-of-Spain City Corporation, and the San Fernando City Corporation, and regional corporations, which were based on the ground of sex rather than on criteria relating to the work performed. In this regard, the Committee notes the Government's statement that the job title "female labourer" was being removed. The Committee also notes the Government's indication that the report of the Joint Working Party on Reclassification and regarding all the jobs in the bargaining unit represented by the National Union of Government and Federated Workers makes reference to ensuring that the new grading structure is free from gender bias. ***The Committee asks the Government to provide a copy of the report of the Joint Working Party, which was not attached to the Government's report, and to provide information on the progress made in removing sex discriminatory provisions from collective agreements, and the resulting impact on the gender wage gap of those persons covered by such collective agreements.***

2. *Promotional measures.* The Committee notes with interest the information provided concerning the awareness-raising programmes carried out by the Employers' Consultative Association which, inter alia, sensitized interested parties on the concept of equal remuneration for work of equal value. ***The Committee asks the Government to continue to provide information on any awareness-raising and training activities carried out, including initiatives by workers' and employers' organizations, to promote a better understanding and application of the Convention's principle, including through the use of objective job evaluation methods.***

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

## Turkey

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)**

1. In its previous observation, the Committee noted that section 5(4) of the Labour Act of 22 May 2003 (No. 4857) provides that a lower wage cannot be fixed for the same work or work of equal value on the ground of sex and asked the Government to provide information on the practical application and enforcement of this provision. In its report, the Government confirms that the labour inspectors have the responsibility of monitoring the application of section 5(4) of the Labour Act. However, no cases concerning section 5(4) had been detected through labour inspection so far.

2. The Committee notes that, while appropriate legislation setting out the principle of equal remuneration for men and women for work of equal value is an important means to apply the Convention, it is equally important to ensure that these legal provisions are applied in practice. To this end, it is crucial to undertake training and awareness-raising activities to promote a full understanding of the meaning and implications of the principle of equal remuneration for work of equal value among labour inspectors, judges, public officials responsible for labour and gender equality matters, as well as workers and employers and their organizations. In this context, it is particularly important to emphasize that the principle of the Convention does not only require equal remuneration to be paid to men and women when they perform the same work, but also when they perform different work that is nevertheless of equal value. The Committee draws the Government's attention to its 2006 general observation which elaborates further on these issues and hopes that it will be used by the Government for training and awareness-raising purposes with a view to further promoting the application of the Convention. ***The Committee asks the Government to provide information on any measures taken to promote awareness and understanding of the Convention's principle and section 5(4) of the Labour Act among relevant target groups, including labour inspectors. The Government is also asked to continue to provide information on administrative and judicial decisions involving section 5(4) of the Labour Act.***

The Committee is raising other matters 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), the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Confederation of Public Employees Trade Unions (KESK), which were attached to the report.

1. *Equality of opportunity and treatment for men and women.* The Committee notes the information provided by the Government, as well as TISK, on the various programmes, initiatives and campaigns to promote greater access of women and girls to education and training. According to the statistical information provided in the report, 46.8 per cent of secondary school students are girls. Efforts were made to increase accommodation and transportation facilities for girls and boys with a view to increasing access to education. Women continued to benefit from active labour market measures offered by the Turkish National Employment Agency. The Committee also notes that gender equality and the promotion of women's employment has been the subject of projects carried out in cooperation with the European Union. A legislative initiative is ongoing to provide for unpaid parental leave.

2. While welcoming these efforts, the Committee also notes with great concern that the rate of participation of women in the labour force has continued to decrease. According to the Government's data, women's labour force participation rate further decreased from 25.4 per cent in 2004 to 24.8 in 2005. The labour force participation rate of women with a university education decreased considerably between 2004 and 2005 from 17 to 14.2 per cent. The Committee notes that the seriousness of women's situation in the labour market and the fact that women remain concentrated in agriculture and the informal economy has been acknowledged by the Women's Employment Summit which took place in Istanbul in February 2006. The Committee notes that the Final Declaration adopted by the Summit sets out important proposals to move forward, including through the development of a long-term National Women's Employment Policy to be implemented through annual action plans, enhanced social dialogue and the promotion of equal opportunity practices. The Declaration also calls for further measures to reduce female illiteracy and to increase women's access to vocational training and higher education. ***The Committee requests 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, including information on any measures taken in cooperation with workers' and employers' organizations to follow-up on the proposals made by the 2006 Women's Employment Summit.***

3. The Committee notes the communication of KESK dated 31 May 2006, which was received together with the Government's report, stating that discrimination based on sex occurred in practice despite the existing legal provisions. ***Recalling its previous comments concerning the practical application and enforcement of the Labour Act's equal treatment provisions, the Committee reiterates its request to the Government to provide detailed information on the measures taken by the Labour Inspectorate to monitor compliance with the Labour Act's equal treatment provisions, as well as information on any relevant judicial or administrative decisions, including whether any sanctions have been imposed for non-compliance, as provided under section 5 of the Labour Act.***

4. With regard to the Committee's previous comments concerning the current restrictions on the wearing of head coverings by students in higher educational institutions, the Committee notes that the Government's report provides no

information in reply to the Committee's specific requests. *The Committee recalls its previous comments on this matter and reiterates its request to 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 a headscarf out of religious obligation or conviction. Please also provide information on the number of female students expelled from universities for wearing headscarves on university premises. The Committee urges the Government to take the necessary measures to provide this information in its next report.*

5. *Discrimination based on political opinion.* In its previous observation the Committee trusted that the Government would ensure that journalists, writers and publishers are not restricted in the exercise of their employment or occupation because of political opinions expressed by them and requested the Government to provide information concerning cases involving convictions of persons exercising these professions under the Anti-Terrorism Act or the Penal Code. The Committee notes from the Government's report that as of 20 June 2006 there were 1,068 cases against journalists, writers and publishers pending under the Anti-Terrorism Act or the Penal Code. Between 1 January 2006 and 20 June 2006, a total of 74 such cases had been adjudicated, two of which led to convictions imposing prison sentences (one of them suspended) and 37 convictions imposing fines. *The Committee requests the Government to continue to provide detailed 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 urges the Government to take measures, 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.*

6. The Committee further notes that according to KESK the practice of refusing to reinstate public employees prosecuted under articles 301 and 216 of the Penal Code and those disciplined for holding left-wing views continues unabated, despite court decisions to the contrary. Reference is made to two specific cases in which the Ministry of National Education had refused to reinstate employees despite the fact that court decisions against them had been annulled. KESK also states that employees sharing the religious views of the Government had been promoted at the expense of other employees. *The Committee requests the Government to provide a reply with regard to the matters raised by KESK.*

7. *Article 3(d) of the Convention. Security investigations.* The Committee noted previously that security investigations are required for persons to be employed in a very broad range of public institutions dealing with matters unrelated to state security, and which did not appear to be limited to checking criminal convictions but also whether the person had contact with the police or intelligence units. In this context, the Committee expressed concern that such security investigations may lead to exclusions from employment contrary to the requirements of the Convention, for instance due to having peacefully expressed political opinions. The Committee requested the Government to assess the extent to which security investigations had led to exclusions from the public service and the reasons thereof. In its report, the Government states that security investigations in public institutions are limited to those employees working in units holding classified information and that the assessments reached on the basis of security investigations can be challenged before the administrative courts. *While noting this information, the Committee nevertheless reiterates its request to 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.

## Ukraine

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)**

1. *Articles 1 and 2 of the Convention. The principle of equal remuneration in national legislation.* Recalling its previous comments recommending that the Government consider giving full legislative expression in the Labour Code to the principle of equal remuneration for men and women for work of equal value, the Committee notes that section 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men 2006, requires the employer to ensure equal pay for men and women for work involving equal skills and working conditions.

2. The Committee notes that the new equal remuneration provisions constitute progress in two ways: (1) they assign responsibility to the employer to ensure equal remuneration; and (2) they appear to allow for comparison of remuneration received by men and women performing different jobs, as long as they involve equal skills and working conditions, thus taking the content of the job as the point of departure for comparing levels of remuneration.

3. However, the Committee also notes that by referring to equal skills and working conditions rather than to the broader notion of work of equal value, the new provisions appear to be more restrictive than the principle of equal remuneration of the Convention. The Committee recalls that a job performed by a man and a woman may involve *different* skills and working conditions, but may nevertheless be of equal value and thus would have to be remunerated at an equal level. Further, linking the right to equal remuneration for men and women to two specific factors for comparison (skills, working conditions), the new provisions may have the effect of discouraging or even excluding objective job evaluation on the basis of a wider range of criteria, which is crucial in order to eliminate effectively discriminatory undervaluation of

jobs traditionally performed by women. In addition to skills and working conditions, factors such as effort and responsibility are important and widely used criteria for objective evaluation of jobs, as set out in the Committee's 2006 general observation on this matter.

4. *The Committee hopes that the Government will continue to make efforts to review and strengthen its legislation to apply the Convention and asks the Government to consider further strengthening the legislation by introducing provisions that would explicitly set out the principle of equal remuneration for work of equal value, as contained in the Convention, and promote effectively objective job evaluation as a means of implementing the principle in practice. The Committee asks the Government to provide information in its next report on any measures taken in this regard, as well as information on the implementation of the equal remuneration provisions of section 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, including any relevant administrative or judicial decisions.*

5. *Articles 2(2)(c) and 4. Collective bargaining.* The Committee notes that section 18 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men 2006, provides that collective agreements at the different levels should include provisions which ensure equal rights and opportunities of women and men and that agreements should, inter alia, envisage the elimination of inequality in the remuneration of labour of men and women, wherever it exists. *The Committee asks the Government to provide detailed information on the implementation of these provisions, including information on the specific measures taken to ensure that collective agreements promote equal remuneration for men and women in accordance with the Convention, as well as examples of relevant provisions of collective agreements.*

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1961)***

#### ***Discrimination on the basis of sex***

1. In its previous observation the Committee noted that, according to the Confederation of Free Trade Unions of Ukraine (KSPU), women were facing unequal treatment in the labour market, including discriminatory recruitment practices and were concentrated in low-paid jobs, occupations and sectors. The KSPU also referred to instances where the state employment service requested employers to indicate whether they preferred to employ men or women, and where it included the sex of the worker in vacancy announcements. The Committee requested the Government to provide detailed information on the measures taken to eliminate discriminatory recruitment practices in the private and public sectors, and well as on the specific measures taken to tackle the existing inequalities between men and women in employment and occupation.

2. In this context, the Committee notes with satisfaction that the Parliament of Ukraine has adopted a Law on Ensuring Equal Rights and Equal Opportunities of Women and Men which entered into force on 1 January 2006. The Law is aimed at ensuring equality of women and men in all spheres of society, including employment, through enforcement of equal rights, the elimination of gender discrimination, and positive action to address the existing inequalities between men and women. Under section 17, equal rights and opportunities shall be granted to women and men in the field of employment, job promotion, skills development and retraining. Discriminatory job advertisements and seeking information on the private life of job applicants is prohibited. Section 17 also states that the employer has an obligation to create working conditions which enable women and men to perform work on an equal basis. Employers are authorized to take positive action aimed at achieving a balanced ratio of men and women in the different types of work and categories of workers. The Committee also notes that the Law establishes a national machinery for the promotion of gender equality, assigning specific responsibilities to a number of public bodies and institutions. Persons who deem that they have been subjected to discrimination on the grounds of gender have the right to appeal to these bodies (section 22). *The Committee requests the Government to provide in its next report information on the progress made in implementing the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, including information on any examples of positive action taken by employers, and the activities carried out by the different parts of the national machinery to promote gender equality at work. Please also indicate the number, nature and outcome of any appeals concerning employment discrimination filed under section 22 of the Law.*

3. *Sexual harassment.* The Committee notes that, under the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, the employer must take measures to prevent sexual harassment (section 17), which is defined as "actions of a sexual nature, expressed verbally (threats, intimidation, indecent remarks) or physically (touching, slapping), which humiliate or insult persons who are in position of subordination in terms of their employment, official, material or other status" (section 1). The Committee notes that this definition would not appear to cover situations where conduct of a sexual nature creates a hostile working environment, irrespective of whether there is a relation of subordination between the harasser and the victim. The Committee recommends that the definition of sexual harassment be expanded to cover such situations. *Please provide information on any consideration given to this matter, as well as information on any complaints of sexual harassment received and addressed by the competent authorities.*

4. *Situation of men and women in the labour market.* The Committee notes from the statistical information provided by the Government that the employment rate for women (15–70 years) amounted to 53.1 per cent, compared to

62.8 per cent for men. The unemployment rate for women (15–70 years) was 7.7 per cent, while that of men was slightly higher at 7.9 per cent. The Committee also notes that, in 2005, 60.8 per cent of those receiving vocational training to increase their competitiveness in the labour market were women, while the rate of women among participants in public works programmes was 68 per cent. According to the report, half of those provided with work by the state employment service in 2005 were women. ***While the statistical data provided is useful to assess the overall situation of women in the labour market, the Committee requests the Government also to provide data on the participation of men and women in the different jobs, occupations and sectors of the economy, including data on women's employment in managerial and decision-making positions (private and public sectors). Emphasizing that the provision of employment services free from gender-bias and discrimination is crucial to promoting and ensuring equal access of women to employment, the Committee requests the Government to indicate any specific measures taken to ensure that the operations of the state employment service are non-discriminatory and actively promote women's equality in the labour market, particularly in the light of the newly adopted gender equality legislation.***

5. *Cooperation with employers' and workers' organizations.* The Committee recalls that a gender analysis of collective agreements was undertaken within the ILO/USDOL technical cooperation project promoting fundamental principles and rights at work. In this regard, the Committee welcomes the fact that section 18 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men recognizes that collective bargaining should contribute to the promotion of gender equality at work by providing that collective agreements and contracts should contain provisions promoting gender equality, including timelines for the implementation of such provisions. ***The Committee requests the Government to provide information on the implementation of section 18 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, including examples of collective agreements that promote and ensure gender equality in accordance with the Law. Please indicate any measures taken to seek the collaboration of employers' and workers' organizations on this matter, and any measures taken to support and provide assistance to the social partners concerning gender equality matters.***

#### ***Discrimination on the basis of race, colour and national extraction***

6. On a number of occasions, the Committee sought information from the Government concerning the measures taken or envisaged to ensure and promote equality of opportunity and treatment in employment and occupation on the grounds of race, colour and national extraction, particularly the measures taken in respect of the Crimean Tartars and the Roma. Noting that the Government's latest report once again fails to provide any information in reply to the Committee's comments, the Committee wishes to point out that the Government has an obligation to adopt and implement a policy to promote equality in employment and occupation with a view to eliminating discrimination on all the grounds referred to in the Convention, including discrimination on grounds of race, colour or national extraction in employment faced by groups and communities such as Crimean Tartars and the Roma. The Committee emphasizes that under *Article 3(f) of the Convention*, the Government must inform the ILO of the action taken pursuant to the national equality policy and the results achieved by such action. In this context, the Committee also notes the concerns expressed by the Committee on the Elimination of Racial Discrimination over reports indicating that many Roma are deprived of their right to equal access to employment and education. Crimean Tartars reportedly remain underrepresented in the public service of the Autonomous Republic of Crimea and many of them have been excluded from the agrarian land privatization process (Concluding observations of 17 August 2006, CERD/C/UKR/CO/18, paragraphs 11, 14 and 15). ***The Committee requests the Government to provide in its next report full information on the measures taken to promote and ensure equality of opportunity and treatment in employment and occupation of the Crimean Tartars and the Roma. This information should include statistical data indicating the extent to which members of both communities participate in vocational training, as well as in public and private employment.***

#### ***Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 2000)***

*Articles 3 and 4 of the Convention.* The Committee notes the Law of 2006 on Ensuring Equal Rights and Equal Opportunities of Women and Men. It notes with interest that the Law makes the ensuring of equal opportunities for men and women in respect of combining work and family responsibilities and the promotion of responsible maternity and paternity explicit objectives of state policy on gender equality (section 3). Under the Law, the executive authority and local self-government bodies are required to create conditions enabling men and women to combine their work and family responsibilities (section 12) and to ensure accessible social services, including child care, pre-school education and child benefits. Section 17 provides that the employer shall provide men and women with the possibility of combining work and family responsibilities. In addition, the Committee notes from the Government's report that the draft Labour Code contains provisions prohibiting discrimination against male and female workers based on family responsibilities. ***The Committee requests the Government to provide detailed information in its next report on the measures taken by the competent bodies and authorities to ensure the full implementation of the Law of 2006 on Ensuring Equal Rights and Equal Opportunities of Women and Men with regard to issues concerning workers with family responsibilities. The Committee hopes that the future Labour Code will provide for terms and conditions of employment for men and women workers with family responsibilities that will enable them to exercise their right to free choice of employment, as envisaged under the Convention. Finally, the Committee requests the Government to indicate the measures taken to***

*seek the participation and collaboration of workers' and employers' organizations in devising and applying measures designed to give effect to the provisions of the Convention.*

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)***

1. The Committee notes the Government's report and the communication sent by the Confederation of Workers of Venezuela (CTV), which was forwarded to the Government on 19 June 2007, and the Government's reply thereto received on 20 September 2007. The Committee notes that the Government has not replied specifically to the communications from the National Single Federation of Public Employees (FEDE-UNEP), affiliated to the CTV, which were forwarded to the Government on 23 November 2004 and 22 March 2006.

2. *Discrimination on political grounds. Tascón list.* The communications of the FEDE-UNEP refer to 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. FEDE-UNEP provided 700 names of dismissed workers. The names of the workers who participated in initiating the referendum process were published prior to their dismissal on a list on the Internet which, according to FEDE-UNEP and CTV, was used as a source of information for reprisals. In its communication of 2007, the CTV refers to the fact that 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". Nevertheless, according to the union, the discrimination has continued and has worsened in the public sector.

3. *Discrimination on political grounds in Petróleos de Venezuela (PDVSA).* On the matter of the 19,500 workers dismissed from the PDVSA, the Committee notes that the CTV cites statements allegedly made by the President of the PDVSA which illustrate that these dismissals were politically motivated. According to the CTV, the President of the PDVSA expressed his determination to continue to dismiss employees to ensure that the enterprise "is in line with and reflects the love our people have expressed towards our President". In its reply to the CTV's comments, the Government refers to the legislation providing protection against discrimination and provides information on the status of complaints filed by dismissed employees of the PDVSA. However, the Government does not comment on statements allegedly made by the President of the PDVSA. ***The Committee strongly urges the Government to take the necessary measures to investigate the allegations of management practices in the public sector, including the PDVSA, that discriminate against employees on the basis of their political opinion, and to end such practices where they are found to exist. Please keep the Committee informed in this regard. The Committee also refers in this regard to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).***

4. *The armed forces.* The CTV indicates that, although there have not been changes in the provisions establishing the institutional and non-political nature of the armed forces, soldiers and officers are obliged to shout the slogan "Fatherland, socialism or death" and that the President of the Republic has stated that whoever is not prepared to give voice to this slogan must resign.

5. The Committee notes that, in its communication, the Government refers to section 7 of the Organic Labour Act which excludes the members of 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 from the scope of the Act. The Committee stresses that, although the Organic Labour Act does not apply to members of armed corps, they, like other workers, enjoy the protection laid down by the Convention. The Committee reminds the Government that, according to paragraph 47 of its Special Survey of 1996 on this Convention, "the general obligation to conform to an established ideology or to sign an oath of political allegiance would be considered discriminatory".

6. *Pressure on public officials.* The CTV adds that the President of the Republic has decided to establish a new political party and observes, indicating that a political organization is being established by the State, that action in support of this party is undertaken in state schools and that there have been many complaints of pressure exerted upon public officials to join that organization. The Government indicates in this connection that the Constitution of the Bolivarian Republic of Venezuela provides for the freedom to join any party. The Committee notes that the issues arising under the Convention do not relate in this case to the forming of a political party, but the pressure exerted on workers, whether from the public or the private sector, to join a given party.

7. The Committee stresses that threats, harassment, transfers, worsening of working conditions and 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).

8. ***The Committee expresses deep concern at the facts referred to above and urges the Government to adopt all the necessary measures in law and practice to provide redress for the effects of the acts of discrimination referred to above, to prevent such situations recurring and to protect workers in both the public and private sectors from***

*discrimination on the grounds of political opinion, in accordance with the Convention. It requests the Government to provide detailed information of the specific measures taken in this regard.*

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

[The Government is asked to reply in detail to the present comments in 2008.]

## Viet Nam

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)**

1. *Assessment of the gender wage gap.* In its previous comments, the Committee asked the Government to provide statistical information, disaggregated by sex, on the income levels of men and women in the various sectors, occupational groups and levels of employment. The Committee notes that the Government's report does not provide such information. It notes nevertheless from the Viet Nam Country Gender Assessment prepared in 2006 by the World Bank, the Asian Development Bank, the United Kingdom's Department for International Development and the Canadian International Development Agency, that a woman in Viet Nam, on average, earned 83 per cent of a man's wage in urban areas and 85 per cent in rural areas (data for 2004). The Assessment refers to sex-based labour market segregation due, inter alia, to "widespread discrimination against women in recruitment", and to the "low value attached to women's work in particular sectors" as causes of the gender wage gap. *Noting that under the Law on Gender Equality 2006, the Government has the responsibility to establish statistical information and report on gender equality, the Committee urges the Government to take the necessary measures to collect, and analyse, and provide to the Committee, appropriate statistical information on the earnings of men and women that would allow the Government and the Committee to assess the progress made in closing the gender pay gap.*

2. *Legislation applying the Convention.* The Committee recalls its previous comments noting that the provisions concerning equal remuneration of the Labour Code do not fully apply the principle of equal remuneration for men and women for work of equal value, as set out in the Convention. The Committee invited the Government to consider giving full legislative expression to the principle and asked it to indicate the steps taken in this regard. The Committee notes that the Government's report, received at the ILO on 20 September 2006, does not provide any response to these comments. However, the Committee notes that section 13 of the Law on Gender Equality, which was adopted in December 2006, provides for equal treatment of men and women in respect of, inter alia, "wages, pay and bonuses". Noting that section 13 appears to provide for equal pay for equal work, the Committee once again stresses that the Convention, in addition, requires equal remuneration to be paid for work of equal value. Under the Convention, women must have the right to equal remuneration not only when they perform the same or identical jobs or occupations as men, but also when they perform jobs or occupations that are different from those done by men but are nevertheless of equal value. This aspect of the Convention is crucial in understanding how to eliminate pay discrimination that consists of undervaluing the work performed in female-dominated jobs, occupations and sectors. *Noting that the Law on Gender Equality and the Labour Code fall short of fully applying the Convention, the Committee draws the Government's attention to its general observation of 2006 which further elaborates on the importance of the notion of "work of equal value" in the elimination of pay discrimination against women. It urges the Government to consider giving full legislative expression to the principle of equal remuneration for men and women for work of equal value and to take the necessary action in this regard. The Government is asked to indicate the specific steps taken to bring the legislation into conformity with the Convention, including in the context of the ongoing revision of the Labour Code.*

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 women and men**

1. *Legislative developments.* The Committee notes with interest the adoption of the Law on Gender Equality in November 2006 which entered into force on 1 July 2007. The Law has a broad scope of application covering state institutions, a wide range of organizations, including enterprises, and individuals. Section 10 prohibits all forms of gender discrimination which is defined as any "act of restricting, excluding, not recognizing or not appreciating the role and position of men and women leading to inequality" (section (5)(5)). Sections 13 and 14 deal with equal treatment in the field of labour and in training and education respectively. While welcoming these provisions in the new legislation, the Committee regrets that the opportunity was not taken to introduce a definition of discrimination in employment and occupation in accordance with *Article 1 of the Convention*, including an explicit definition and prohibition of direct and indirect discrimination, including unintentional discrimination. *The Committee requests the Government to provide detailed information on the measures taken to ensure the effective implementation of the Law on Gender Equality, including information on the following points:*

- (a) *progress made in reviewing laws and regulations concerning the employment of women from a gender equality perspective, including the list of occupations from which women are barred by reason of physical burden or hazardousness;*

- (b) *the number, nature and outcome of any complaints received and addressed by the competent authorities pursuant to sections 13 and 14 of the Law on Gender Equality;*
- (c) *any measures taken or envisaged to provide training to relevant target groups, including public officials, workers' and employers' organizations, concerning the meaning and implications of the principle of equality of opportunity and treatment in employment and occupation, as established by the Convention.*

2. *Situation of women in employment and occupation.* The Committee notes from the Government's report that under the National Action Plan for the Advancement of Women (2001–10) ministries and government agencies at all levels have established action plans which contribute to the creation of jobs for women. According to the report, a large number of women work in sectors such as the garment and footwear industries and in traditional crafts. Between 2001 and 2005, the Government was able to create jobs for 7.54 million persons, 46 per cent of whom were women. Women's urban unemployment rate decreased from 6.98 per cent to 6.14 per cent, compared to a decrease in the overall urban unemployment rate from 6.28 per cent to 5.31 per cent. During the same period, some 5,326 persons received vocational training, 33 per cent of whom were women. The Committee also notes from the Vietnam Country Gender Assessment prepared in 2006 by the World Bank, the Asian Development Bank, the United Kingdom's Department for International Development and the Canadian International Development Agency that, according to a 2004 survey, 26 per cent of working women had their main job in wage employment, compared to 41 per cent of men, and that women have fewer training and career opportunities. *The Committee encourages the Government to continue to take measures to address women's inequality in employment and occupation and requests it to provide in its next report information on the action taken and the results achieved, including on measures taken to increase the access of women, particularly in rural areas, to training and employment in a wider range of sectors and occupations, and to credit services. The Committee also requests the Government to provide detailed statistical information on the participation of men and women in training and employment and work, including in high-level positions (in the private and public sectors, as well as the informal economy).*

3. *Discriminatory recruitment practices based on sex.* Recalling its previous comments concerning the existence of employment practices that discriminate against women, such as giving preference to male job applicants and discouraging female applicants by establishing requirements prohibiting marriage or pregnancy during a certain period following recruitment, the Committee notes that widespread discriminatory recruitment practices were also reported by the abovementioned 2006 Vietnam Country Gender Assessment. *The Committee requests the Government to take urgent measures to end such practices and to report on the measures taken to this end in its next report.*

4. *Sexual harassment.* The Committee notes the Government's indication that the legislation does not provide for a formal definition of sexual harassment. However, section 111(1) of the Labour Code prohibits any discriminatory conduct against a female employee, as well as conduct degrading her dignity and honour. In addition, a worker can bring a case under section 121 of the Penal Code ("humiliating other persons"). *The Committee requests the Government to indicate whether any cases of sexual harassment have been addressed under the abovementioned provisions, and whether any activities to raise awareness concerning this issue are being undertaken. Noting that the Law on Gender Equality does not explicitly address sexual harassment, the Committee urges the Government to consider the inclusion of specific legislative provisions defining, prohibiting and preventing sexual harassment at the workplace.*

#### *Equality of opportunity and treatment of ethnic minority groups*

5. The Committee notes from the 2006 Vietnam Country Gender Assessment that nearly twice as many ethnic minority heads of household work in agricultural self-employment and they are half as likely to be in wage employment. In its report, the Government indicates that it has been implementing a number of policies to promote better employment and vocational training for persons of ethnic minority origin. The Government states that under Decree No. 39/2003/NŞ-CP of 8 April 2002, the Committee on Ethnic Minority Affairs and the Ministry of Labour, Invalids and Social Affairs are responsible for proposing preferential policies concerning the employment of ethnic minority workers. In addition, the Government refers to Decision No. 267/2005/QĐ-TTg of 31 October 2005 relating to vocational training for ethnic minority groups, and Decision No. 134/2004/QĐ-TTg of 20 July 2004 which addresses issues relating to the access of ethnic minority households to land and water. The Government also reports that many programmes and projects had been implemented in areas where ethnic minority groups live to support vocational training and employment creation under the respective provincial plans, including through improving access to labour market information. *The Committee requests the Government to provide detailed information on the implementation of the abovementioned measures and policies, including statistical information on the participation of ethnic minorities in training, education and employment. It also requests the Government to provide more information on the programmes and projects implemented in ethnic minority areas, indicating the type of training provided, the kind of occupations and employment promoted, as well as the measures taken to consult with the groups concerned in the process of developing and implementing these programmes.*

#### *Discrimination based on political opinion, religion, colour and national extraction*

6. Recalling its previous comments concerning the absence of any legal provisions prohibiting discrimination based on political opinion, colour and national extraction, and noting the Government's statement that such discrimination did

not exist in Viet Nam, the Committee draws the Government's attention to the fact that since combating discrimination is an ongoing process, it does not accept statements to the effect that discrimination is non-existent in a given country. The absence of discriminatory provisions in the law and the fact that no complaints are being raised with the authorities are not considered to be an indication of the absence of discrimination altogether. The Committee stresses 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 relation to all the forms of discrimination covered by the Convention. ***The Committee, therefore, requests the Government once again to provide information on any measures taken or envisaged to ensure the Convention's application, in law and in practice, with respect to equality of opportunity and treatment irrespective of political opinion, national extraction and colour. In the absence of a reply from the Government, the Committee also reiterates its previous request for information on the application of section 8 of Ordinance No. 21/2004/PL-UBTVQH11 regarding religious beliefs and religious organizations, which prohibits discrimination on religious grounds, indicating the manner in which it provides protection against religious discrimination in employment.***

***Measures affecting individuals who are justifiably suspected of, or engaged in, activities prejudicial to the security of the State***

7. In its previous comments, the Committee sought information from the Government on the application of section 36 of the Penal Code under 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 has requested this information in order to assure itself that section 36 is not unduly limiting the protection intended by the Convention, particularly from discrimination based on grounds such as religion or political opinion. ***Noting that no information has been provided by the Government on this matter, the Committee once again requests the Government to provide information on the application of section 36 of the Penal Code in practice, indicating the number of bans imposed under it, as well as the offences in connection to which such bans were imposed. The Committee also requests the Government to indicate whether the persons on whom a ban under section 36 has been imposed have the right to appeal to an independent body.***

## Zimbabwe

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)***

The Committee recalls the communication of the Zimbabwe Congress of Trade Unions (ZCTU) dated 1 September 2006, and notes the Government's reply thereto dated 10 January 2007.

1. ***Discrimination against women.*** The ZCTU had raised concerns regarding discrimination against women in access to certain benefits, including maternity leave, particularly as many women are contract workers, seasonal workers and domestic workers. The Committee notes the Government's indication that with respect to maternity benefits for public servants, the Public Service Act is being amended, and will be brought into conformity with international labour standards. ***The Committee requests the Government to keep it informed of the status of the amendments to the Public Service Act, and also to indicate how female contract workers, seasonal workers and domestic workers are protected against discrimination.***

2. ***Discrimination on the basis of political opinion.*** The Committee notes that the ZCTU submits that discrimination based on political opinion has been practised by government-owned or quasi-government companies. ZCTU refers to dismissals, victimization and demotions due to political opinion. The Government states that the ZCTU has not provided sufficient details to allow it to reply. ***Bearing in mind that the Committee has raised concerns for a number of years regarding discrimination on the ground of political opinion, and given the serious nature of these allegations, the Committee urges the Government to take specific measures to ensure that in practice no discrimination based on political opinion or affiliation is permitted, and that any such act of discrimination is duly sanctioned and appropriate remedies provided.***

3. ***The Committee requests the Government in its next report to address the issues raised above as well as the points set out in its 2006 direct request.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 100** (Algeria, Angola, Armenia, Australia, Australia: Norfolk Island, Austria, Bahamas, Barbados, Belize, Benin, Bolivia, Botswana, Brazil, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, France, France: French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon, Gabon, Gambia, Germany, Grenada, Guatemala, Guyana, Haiti, Honduras, Indonesia, Islamic Republic of Iran, Jamaica, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Malawi, Mali, Malta, Mauritius, Mexico, Mongolia, Mozambique, Nepal, Netherlands, New Zealand, New Zealand: Tokelau, Nicaragua, Niger, Pakistan,

*Panama, Papua New Guinea, Paraguay, Peru, Philippines, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Seychelles, Sierra Leone, Singapore, Slovakia, South Africa, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, United Kingdom: Gibraltar, Uzbekistan, Bolivarian Republic of Venezuela, Viet Nam); **Convention No. 111** (Algeria, Angola, Antigua and Barbuda, Australia, Austria, Bahamas, Bahrain, Barbados, Belize, Benin, Bolivia, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Dominica, Dominican Republic, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, France, France: French Guiana, French Polynesia, French Southern and Antarctic Territories, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon, Gabon, Gambia, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Indonesia, Jamaica, Jordan, Kazakhstan, Republic of Korea, Kuwait, Lebanon, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Mongolia, Namibia, Nepal, Netherlands, New Zealand, New Zealand: Tokelau, Nicaragua, Niger, Nigeria, Norway, Panama, Papua New Guinea, Peru, Philippines, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Slovakia, South Africa, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Togo, Turkey, United Arab Emirates, Uzbekistan, Bolivarian Republic of Venezuela); **Convention No. 156** (Argentina, Australia, Australia: Norfolk Island, Belize, Bolivia, Bosnia and Herzegovina, Chile, Croatia, Ethiopia, Finland, France, Greece, Guinea, Iceland, Republic of Korea, Lithuania, Mauritius, Netherlands, Niger, Peru, Portugal, Russian Federation, San Marino, Slovakia, Slovenia, Sweden, Ukraine, Bolivarian Republic of Venezuela, Yemen).*

## Tripartite Consultation

### Albania

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)**

*Articles 2 and 5, paragraph 1, of the Convention. Effective tripartite consultations required by the Convention.* The Committee takes note of the information provided by the Government's report received in September 2007 on the consultations held in the National Labour Council (NLC) and its specialized commissions. The Committee further notes the observations of the Confederation of Trade Unions of Albania (CTUA) and the Government's reply to the matters raised by the CTUA. In particular, the CTUA indicates that neither consultations regarding items for the agenda of the International Labour Conference took place nor were Government's reports in accordance with article 22 of the Constitution consulted with workers' organizations. The Government indicates in its report that in all cases consultations have been carried out with all representatives of the trade unions and those of employers' organizations that were members of the Albanian delegation to the Conference. The Government's reports on the application of Conventions have been made available to the social partners who were free to comment on them. The Committee notes with interest that the ratification of Conventions Nos 129, 156 and 185 were registered on 11 October 2007. ***The Committee would welcome receiving further information on the effective tripartite consultations held during the period covered by the next report, particularly in the framework of the NLC, on each of the subjects listed in Article 5, paragraph 1, of the Convention.***

### Algeria

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)**

1. *Articles 3, 4, paragraph 1, and 6, of the Convention. Working of consultation mechanisms.* The Committee notes the Government's report received in June 2007 which contains information on the manner in which employers' and workers' representatives are chosen for the purposes of the Convention and on the administrative support provided by the Ministry of Labour and Social Security. ***The Committee once again asks the Government to provide information concerning the tripartite consultations held on the preparation of annual reports concerning the working of consultation procedures, indicating the outcome of these consultations, as required under Article 6 of the Convention.***

2. *Article 2. Strengthening social dialogue. Tripartite consultations required under the Convention.* In its report, the Government states that a bipartite meeting between the Government and the General Federation of Algerian Workers (UGTA) was held on 3 July 2006 and that a tripartite meeting was held on 30 September and 1 October 2006. These meetings led to the adoption of a number of measures, some of which were taken up by the 2006 Supplementary Finance Act (sections 29 and 30 of Order No. 06-04 of 15 July 2006). Moreover, a National Economic and Social Pact and collective agreements have been concluded. In its previous comments, the Committee noted the Government's intention to establish a tripartite body specifically covering matters relating to international labour standards. ***The Committee once again asks the Government to provide, in its next report, information on the progress made in setting up procedures to ensure effective tripartite consultations on international labour standards.***

3. *Article 5, paragraph 1. Matters covered by the Convention.* The Committee notes that the Government states in its report that the questionnaire on work in the fishing sector and the draft Convention and Recommendation on Work in Fishing were submitted to the national and regional Fisheries and Aquaculture Chambers. The Committee notes that the Government's report does not contain any information on the tripartite consultations required on the other matters listed in *Article 5, paragraph 1*, of the Convention, namely: (c) the re-examination at regular intervals of unratified Conventions; (d) questions on reports to be made to the ILO under article 22 of the ILO Constitution; and (e) proposals for the denunciation of ratified Conventions. ***The Committee trusts that the Government's next report will contain detailed information on all the tripartite consultations held during the period covered by the next report on international labour standards (questionnaire on the agenda of the Conference, submission to the National Assembly of instruments adopted by the Conference, ratification prospects, reports to be made on the application of ratified Conventions, and 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 brief reply supplied by the Government to its previous comments indicating that, before sending the replies and before the preparation of the items for the agenda of the Conference, matters are regularly consulted in a tripartite forum. The Committee expresses its interest to receive more substantive information on the consultations held on all the matters related to international labour

standards covered by the Convention. *In this respect, the Committee asks the Government again to provide a report containing information on the consultations held by the Tripartite Consultative Council on international labour standards. Regarding the consultations on the proposals made when submitting the instruments adopted by the Conference to the Standing Parliamentary Committee, the Committee of Experts refers to the observations it has been making for many years on compliance with the obligation of submission and hopes that the Government will be in a position to announce very soon that it has held the consultations required by Convention No. 144 and submitted all the remaining instruments to Parliament (Article 5, paragraph 1(b) and (c), of the Convention). Please also supply information on the matters specified in Article 5, paragraph 1(a), (d) and (e), of the Convention, including information on the nature of any reports or recommendations made as a result of the consultations.*

## Belarus

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)**

*Articles 1, 2 and 5 of the Convention. Effective tripartite consultations.* In reply to the Committee's previous observation, the Government reports on the activities of the National Council on Labour and Social Issues (NCLSI), which has included a representative of the Congress of Democratic Trade Unions since August 2006. The Committee notes that in the meeting held on 21 March 2007, the Group of Experts on the application of the ILO's international labour standards discussed the instruments adopted by the Conference in 2006 and the prospects of ratification of Convention No. 187. *To ensure the effective application of Convention No. 144, as previously referred to by the Committee of Experts, it would welcome further details on the tripartite consultations held on each of the matters relating to international labour standards covered by the Convention. It asks the Government to continue providing information on the meetings of the Group of Experts on the application of the ILO's international labour standards and on any recommendation formulated on the matters related to international labour standards covered by the Convention.*

## Belize

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)**

1. The Committee notes with regret that the Government has not provided any information on the application of the Convention since its first report received in July 2003. The Committee recalls the importance of regularly providing clear and up to date information so that it can assess the extent to which effect is given to the provisions of the Convention. *The Committee trusts that the Government will very soon be in a position to provide a report containing clear and up to date information in response to its 2003 direct request, most notably with regard to the matters below.*

2. *Article 2, paragraph 2, of the Convention. Effective tripartite consultations.* The Government previously indicated that the procedures through which effective consultations are ensured consist of written communications through the representative organizations of employers and workers. It further stated that copies of reports and questionnaires are forwarded to the respective organizations for their comments. *The Committee asks the Government to indicate whether consultations took place with the representative organizations for the purpose of establishing effective tripartite consultation procedures within the meaning of the Convention.*

3. *Article 4, paragraph 2. Training.* *The Committee asks the Government to provide information on the arrangements made or envisaged for the financing of any necessary training of participants in the consultative procedures.*

4. *Article 5, paragraph 1. Tripartite consultations required under the Convention. Please provide detailed information on the tripartite consultations held on each of the subjects listed in Article 5, paragraph 1, of the Convention, and indicate any reports or recommendations made as a result of the consultations. Please also include information on the frequency of such consultations and the nature of any reports or recommendations made as a result of the consultations.*

5. *Article 6. Working of the consultative procedures.* *The Committee asks the Government to indicate whether consultations have been held with the representative organizations on "the working of the procedures" and, if so, to give particulars of the decisions adopted. Please supply copies of reports issued as a result of the consultations.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Botswana

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)**

1. *Effective tripartite consultations.* The Committee notes the Government's reply received in May 2007 to its previous observation indicating that no consultations had been held on matters set out in *Article 5, paragraph 1, of the*

*Convention.* The Government was consulting the social partners and other stakeholders on the establishment of consultative machinery for the purpose of implementing the Convention. The Committee recalls that in paragraph 21 of the conclusions of the 11th ILO African Regional Meeting (Addis Ababa, April 2007), it was highlighted that “effective tripartism is a mechanism of governance that enables labour markets to function efficiently and equitably. ... Tripartism furthermore can make a major contribution to improving the effectiveness and accountability of government. Ratification and application of the Convention is an important support to the development of tripartism.” *The Committee hopes that the Government will establish appropriate tripartite social dialogue procedures in accordance with Article 2 of the Convention. It requests again the Government to report on the content of consultations which are held during the period covered by the next report on each of the matters set out in Article 5, paragraph 1, indicating their frequency and the nature of any reports or recommendations resulting from these consultations. Please also supply information on the financing of training necessary for persons participating in the consultative procedures (Article 4, paragraph 2) and on consultations held with the representative organizations concerning the operation of the procedures (Article 6).*

2. The Committee recalls that the Government can call upon, if it considers it appropriate, the advice and assistance of the Office on the matters raised by this observation so that effective tripartite consultations can be held on the subjects on international labour standards covered by the Convention.

## Burkina Faso

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)**

1. *Articles 2 and 5 of the Convention. Effective tripartite consultations required by the Convention.* The Government indicates in its report received in September 2007 that discussions have been under way since 2001 to establish a formal framework for tripartite consultations, and that a series of workshops have been planned to this end but have been unable to be held so far owing to budgetary constraints. The Government states that, while this is pending, the opinions of employers’ and workers’ organizations on all the matters covered by *Article 5, paragraph 1*, of the Convention are gathered in reply to correspondence issued by the Ministry of Labour. The Government confirms this situation in its report received in November 2007. The Committee recalls the importance of providing precise and up to date information on the content and outcome of any tripartite consultations on international labour standards, so that it can assess how the provisions of the Convention are applied in practice. *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 also refers to its observation of 2007 on the obligation to submit instruments adopted by the International Labour Conference to the National Assembly (article 19 of the ILO Constitution) and trusts that the Government’s next report will contain detailed information on all the tripartite consultations which occur during the reporting period on each of the matters covered by Article 5, paragraph 1, of the Convention (questionnaires on the Conference agenda, submission of instruments adopted by the Conference to the National Assembly, prospects for ratification, reports to be presented on the application of ratified Conventions and denunciation of Conventions).*

2. *Article 4. Administrative support and financing of training.* The Government states 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 notes 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)**

*Article 5, paragraph 1, of the Convention. Tripartite consultations required by the Convention.* Replying to the previous comments, the Government states 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, paragraph 1(c) and (d)).*

## Chad

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2006 observation which read as follows:

1. *Articles 2 and 5, paragraph 1, of the Convention. Consultation mechanisms and effective tripartite consultation required by the Convention.* The Committee acknowledged in 2006, the national plan for the implementation of the African Union Plan of Action for the Promotion of Employment and Poverty Alleviation, published by the Ministry of the Public Service, Labour and Employment of Chad in June 2005, which one of the objectives is to promote social dialogue and tripartism. In Chad, social dialogue, in the form of a permanent consultation process with the social partners on problems relating to labour in the broadest sense of the term, has been institutionalized, but is inadequate in certain ways, mainly due to the weakness of the institutions set up for this purpose. In order to improve social dialogue, the national plan envisages providing these institutions with operating resources and reinforcing the capacity of the social partners through the provision of training and information. The Committee also noted that the social dialogue institutions – particularly the High Committee for Labour, Employment and Social Security – had been indicated by the Government in its previous reports as being in charge of the tripartite consultations required by the Convention. ***The Committee asks the Government to provide information in its next report on any progress that is made in reinforcing social dialogue institutions with a view to ensuring that the consultations held between representatives of the Government, employers and workers, on all the issues set forth in Article 5, paragraph 1, of the Convention, are effective within the meaning of Article 2, paragraph 1.***

2. *Article 4. Administrative support and training.* The Committee noted that the Government indicates in its report that, under section 15 of Decree No. 184 of 16 April 2002, the operating costs of the permanent secretariat of the High Committee for Labour and Social Security rest with the State and are covered by the state budget. The Committee noted that, by virtue of section 2 of the Order of 3 May 2000, the main task of the national committee responsible for monitoring social dialogue in Chad is to make proposals concerning the continued training of the social partners and of the administration. ***The Committee asks the Government to describe all the arrangements made for the financing of any necessary training of participants in consultative procedures.***

3. *Article 6. Issuing of annual reports on the working of the procedures.* The Committee noted that, under the terms of section 13, paragraph 1, of Decree No. 184 of 16 April 2002, minutes are prepared for each session of the High Committee for Labour and Social Security. ***The Committee asks the Government to indicate whether an annual report on the working of the procedures provided for in the Convention is issued or envisaged and, if not, to give particulars on the consultations that have taken place with the representative organizations on this question.***

## Chile

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)**

1. *Article 5, paragraph 1(b) and (c), of the Convention. Tripartite consultations required by the Convention.* The Committee takes note of the Government's report received in September 2007, in which the Government states that there have been no changes in the information sent in the previous report. In its direct request of 2006, the Committee welcomed the fact that the Instrument for the Amendment of the Constitution of the ILO, 1997, had been approved by the National Congress. Furthermore, Convention No. 169 was undergoing its second constitutional reading in the Senate with the procedure for its parliamentary approval pending. ***The Committee hopes that in its next report the Government will be able to provide other information on the prospects for ratification of the other Conventions referred to in previous reports (Conventions Nos 152, 160, 171 and 181).*** The Committee refers the Government to its observation on compliance with the obligation to submit the instruments adopted by the Conference to the National Congress and hopes that the Government will shortly provide information on the tripartite consultations required by the Convention in respect of the abovementioned constitutional obligation.

2. *Effective tripartite consultations.* The Committee notes the observations made by the National Union of Workers of Chile (UNT), received in June and August 2007. On 17 August 2007, the Office sent a copy of these observations to the Government. The UNT alleges systematic discrimination, complaining that it is excluded from the meetings convened in accordance with the Convention, particularly meetings to discuss ILO-related matters. The UNT wishes to be consulted in accordance with *Articles 2, 3 and 5* of the Convention. The Committee notes that in its report the Government states that Chilean workers are organized in three central unions: the Single Central Organization of Chilean Workers (CUT), the Autonomous Central Union of Workers (CAT) and the UNT. ***The Committee invites the Government to send its comments on the UNT's observations together with more detailed information on how Articles 1, 2 and 5 of the Convention are applied so as to ensure that the most representative organizations of workers participate fully in the tripartite consultations on international labour standards required by the Convention.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Colombia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)**

1. *Strengthening of social dialogue and tripartite consultations.* In communications sent by the Office to the Government in April 2006, the Union of Public Officials of the University Hospital of Valle (SINSPUBLIC–H.U.V.) and the Single Confederation of Workers (CUT) noted that trade union organizations have tried, on the basis of Convention No. 144, to hold talks with the National Civil Service Commission in order to suggest alternatives and find solutions that would prevent employees from having to take responsibility for administrative errors and which would respect their job stability. The trade union organizations also referred to application-related difficulties in respect of other Conventions ratified by Colombia. In the report received in July 2007, the Government states that the proposals put forward by the trade union organizations of public employees and by the heads of public bodies were taken into account during the conception and preparation of Act No. 909 of 23 September 2004. The aforementioned Act issues rules and regulations governing public employment, careers in administration, and public management – without violating the provisions of Convention No. 144.

2. In this respect, in reply to the previous comments, the Government also reiterates in its report that it is permanently committed to deepening and strengthening social dialogue as an important instrument through which the Government, trade union leaders and employers strive to take advantage of the legal and constitutional provisions available to them in order to move forward in the construction of a forum in which they can discuss labour problems. Nevertheless, the Committee notes with regret that in its report, the Government states that no tripartite consultations have been held on the matters referred to in the Convention. In this regard, the Committee refers to its comments on Convention No. 87. ***It is the Committee's understanding that the Government and the social partners should endeavour to promote and reinforce tripartism and social dialogue in relation to the issues covered by the Convention. Tripartism and social dialogue "have proved to be a valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide range of labour issues on which the social partners play a direct, legitimate and irreplaceable role"*** (see the resolution on tripartism and social dialogue, adopted by the Conference at its 90th Session (June 2002)).

3. *Articles 2 and 5, paragraph 1, of the Convention. Tripartite consultations required under the Convention.* In September 2007, the Office sent the Government new comments received from the CUT, according to which, despite the fact that the CUT and other representative organizations of workers had, on a number of occasions, requested meetings of the Committee for the Handling of Conflicts Referred to the ILO, no such meetings were called by the Government. The CUT insists that the aforementioned committee was not consulted on the matters covered by the Convention. The Committee refers to its previous comments, in which it recalled the need to ensure that consultations on the issues dealt with by the Convention are held sufficiently early. It stated that the Standing Committee for Joint Action on Wage and Labour Policy must be a proper body for dealing with the matters covered by the Convention. It also recalled the possibility of ad hoc tripartite meetings and that other tripartite committees might also be consulted on subjects covered by the Convention. ***The Committee asks the Government once again to provide information on the Government's written communications made with a view to complying with all the consultations required on international labour standards and to indicate whether the Standing Committee for Joint Action on Wage and Labour Policy participates in the consultations required under the Convention.***

4. *Article 5, paragraph 1(b). Prior tripartite consultation. Submission to the Congress of the Republic.* In its report, the Government states that it hopes, in the near future, to be able to make progress in the tripartite consultations so as to fulfil the obligation of submission. ***The Committee refers to the observation it has been making for many years concerning compliance with the obligation to submit ratified instruments, and hopes that the Government will be in a position to inform the Committee very shortly that the consultations required by Convention No. 144 have been held and that all other outstanding instruments have been submitted to the Congress of the Republic.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Congo

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)**

1. The Committee notes with regret that the Government has provided no information on the application of the Convention since its first report, received in June 2004. It reminds the Government of the importance of providing precise and up to date information on a regular basis to enable it to assess the extent to which effect is given to the provisions of the Convention. ***The Committee requests the Government to provide precise and up to date information responding to the points raised in its 2004 direct request, which are repeated below.***

2. *Articles 2 and 6 of the Convention. Effective tripartite consultations required by the Convention.* In 2004, the Committee pointed out in particular that section 2 of Order No. 788 of 6 September 1999 provides for the establishment of

a Technical Advisory Committee on International Labour Standards with responsibility for promoting effective consultations between the Government and the most representative organizations of employers and workers on the matters set out in *Article 5, paragraph 1*, of the Convention. The Government indicated that the abovementioned committee was still not operational owing to lack of funds. ***The Committee requests the Government to provide information on the efforts made to establish the Technical Advisory Committee on International Labour Standards, describing the consultation procedures established within the committee (Article 2 of the Convention). If the committee has started to operate, please send a copy of the annual report on the operation of the consultation procedures, prepared under the terms of section 6 of Order No. 788 of 1999 (Article 6 of the Convention).***

3. *Article 4, paragraph 2. Training.* The Committee noted that training of the participants in the consultation procedures is ensured in the form of seminars organized by the administration and by intergovernmental organizations. ***The Committee requests the Government to provide information on the arrangements made or envisaged to finance necessary training for participants in the consultation procedures.***

4. *Article 5, paragraph 1. Tripartite consultations required by the Convention.* The Government stated previously that consultations on the subjects listed in *Article 5, paragraph 1*, are conducted in writing. ***The Committee refers to the comments it has been making for several years on the obligation to submit instruments adopted by the Conference to the National Assembly, and trusts that the Government will provide detailed information on the consultations held, particularly in the Technical Advisory Committee, on each of the subjects listed in Article 5, paragraph 1, particularly subparagraph (b), during the period covered by the next report, stating their purpose and their frequency, and any reports or recommendations made as a result thereof.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Czech Republic

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)***

1. The Committee notes the detailed information provided by the Government in the report received in August 2007, which includes additional observations from the Czech–Moravian Confederation of Trade Unions (CMKOS).

2. *Questions arising out of Article 22 reports.* In relation to its 2005 observation concerning the consultations required by *Article 5, paragraph 1(d)*, of the Convention, the Committee notes with interest that in 2006 and 2007, drafts of reports were sent to the individual social partners for comments prior to their submission to the ILO and their comments were incorporated in the final wording of the reports. The Government also indicates that in consideration of the comments submitted by CMKOS, special meetings were held with CMKOS in August 2006 and August 2007 at which agreement was reached as to the incorporation of their comments in the final version of the reports. ***The Committee notes with interest the information provided and commends the Government and social partners for their approach in promoting the effective consultation required by the Convention on this matter.***

3. *Re-examination of unratified Conventions and denunciation of Conventions.* The Committee notes the statement CMKOS included in the Government's report recalling that in the parliamentary debate concerning the adoption of the new Labour Code, the Government expressed that the draft submitted to Parliament had created the conditions for ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154). The CMKOS further recalls that the legal conditions for ratification of Conventions Nos 151 and 154 are met, whereas the Government does not consider these ratifications among its priorities. The Committee further notes the continued consultation concerning the denunciation of the Underground Work (Women) Convention, 1935 (No. 45). In this regard, the Committee recalls that in its 2005 direct request on Convention No. 45, the Government was invited to give favourable consideration to the ratification of the Safety and Health in Mines Convention, 1995 (No. 176), which shifts the emphasis from a specific category of workers to the safety and health protection of all mineworkers, and possibly also to denounce Convention No. 45. ***It further invites the stakeholders concerned to hold tripartite consultations for the re-examination of unratified Conventions so that it can consider what measures might be taken to promote, as appropriate, their implementation, ratification, or denunciation (Article 5, paragraph 1(c) and (e), of the Convention).***

## Democratic Republic of the Congo

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)***

1. The Committee notes with regret that the Government has provided no information on the application of the Convention since its first report, received in July 2004. In its observation of 2005, the Committee took note of comments from the Confederation of Trade Unions of the Congo (CSC), endorsed by the World Confederation of Labour (WCL) and sent to the Government in September 2005. Noting these organizations' statement that the report on the Convention had not been sent to trade union organizations, the Committee asked the Government to comment. The Committee reminds the

Government that it is important to send precise and up to date information on a regular basis to allow it to assess the extent to which effect is given to the provisions of the Convention. **The Committee requests the Government to provide a report containing specific and up to date information in response to the comments the Committee has been making since 2004, particularly on the following matters.**

2. *Articles 2 and 5, paragraph 1, of the Convention. Effective tripartite consultations required by the Convention.* The Committee noted previously from the Government's report received in June 2004 that the National Labour Council, a tripartite advisory body, has general competence in the field of labour and that a tripartite committee for the implementation of international labour standards was to be established. It further noted that, since the establishment of procedures was pending, no consultations had been held on the subjects listed at *Article 5, paragraph 1*, of the Convention. **The Committee again draws the Government's attention to the fact that any Member ratifying the Convention undertakes to establish procedures for effective consultations on all the matters covered by Article 5.** The nature and form of the procedures are to be determined by each country in accordance with national practice and following consultation of the representative organizations, where such procedures do not yet exist. **The Committee trusts that the Government will provide detailed information on the operation of the procedures established pursuant to Article 2 and on the content and outcome of tripartite consultations held, particularly in the National Labour Council, on each of the matters listed in Article 5, paragraph 1. It also hopes that the Government will be in a position to provide details of the administrative support provided for the procedures required by the Convention (Article 4, paragraph 1) and on all consultations held with representative organizations on the operation of the procedures (Article 6).**

3. *Article 3, paragraph 1. Free choice of representatives. With reference to its previous comments and the observations sent by the Confederation of Trade Unions of the Congo, the Committee requests the Government to describe the manner in which representatives of employers and workers for the purposes of the Convention are chosen.*

[The Government is asked to reply in detail to the present comments in 2008.]

## El Salvador

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)**

*Articles 2 and 5 of the Convention. Strengthening social dialogue. Preparation of reports.* With reference to its previous comments, the Committee notes the detailed information contained in the report received in August 2007. The Government provided information on the consultations required by the Convention, in which the Higher Labour Council intervened. Furthermore, the Government took into account the indications provided by the Committee by seeking the views of the representative organizations of employers and workers before finalizing a report on the application of ratified Conventions (*Article 5, paragraph 1(d)*, of the Convention). The Government indicates in its report that it is proposing to take the following steps for the preparation of reports: as a first step, prepare the report respecting the deadline for the submission of reports and the comments made by the Committee of Experts, and seek the necessary information from the national agencies involved in the application and enforcement of the ratified Convention; as a second step, once the requested information has been obtained, prepare a first draft of the report; as a third step, forward the draft report to employers and workers so that they can make their observations and provide inputs to be included in the draft report; and, as a fourth step, once the observations have been made by employers and workers, prepare the report by including the observations and inputs proposed by the employers' and workers' organizations with a view to submitting a final report to the ILO. **The Committee notes this approach with satisfaction and trusts that the Government will continue to provide detailed information in future reports on the progress achieved by the Government and the social partners in continuing to hold effective tripartite consultations on all the matters covered by the Convention.**

## Fiji

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)**

1. *Articles 4, paragraph 2, and 5 of the Convention. Tripartite consultations required by the Convention. Training of participants.* The Committee notes the detailed information provided by the Government's report received in May 2007 including the minutes of the meetings held in 2006 by the Labour Advisory Board (LAB) on matters covered by the Convention. The Committee notes with interest that the LAB endorsed the ratification of Conventions Nos 148, 155, 170 and 172. In May 2007, Cabinet approved the ratification of Conventions Nos 149, 155 and 184.

2. In reply to its previous comments, the Government reports that, on the appointments of new members, the Labour Administration Services of the Ministry of Labour arrange for special sessions exclusively for new members to train them on their roles and functions and the procedures of the meetings of the LAB. Under the New Employment Relations Act, 2007, the LAB is known as the Employment Relations Advisory Board and its role and functions have been expanded, thus before its members are appointed, they will have to participate in training to be more effective in executing their

tasks. *The Committee would appreciate continuing to receive particulars of the consultations held during the period covered by the report on the matters set out in the Convention.*

## Gabon

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1988)**

1. *Articles 2 and 5, paragraph 1, of the Convention. Effective tripartite consultations required by the Convention.* The Government indicates in its report received in August 2007 that the three tripartite bodies established by section 250 of the Labour Code, including the Labour Advisory Committee, are still not operational. The Committee notes the agreement of 27 March 2007 on trade union representation, attached to the Government's report, which determines the four most representative workers' confederations. The Government indicates that effective tripartite consultations took place concerning the World Day for Safety and Health at Work, the draft revision of the Labour Code and the reports on the ILO Conventions ratified by Gabon. *The Committee trusts that, as indicated by the Government in its report, the tripartite bodies, particularly the Labour Advisory Committee, will become operational in the near future in order to ensure effective tripartite consultation procedures. The Committee also requests the Government to supply details of the tripartite consultations held, during the period covered by the report, on each of the matters relating to international labour standards covered by Article 5, paragraph 1.*

2. *Article 6. Working of the consultative procedures. With reference to its previous comments, the Committee trusts that consultations with the representative organizations on the working of the procedures covered by the Convention will take place in the near future and that the Government will be in a position to supply information on this matter in its next report.*

## Grenada

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

*Tripartite consultations required by the Convention.* In reply to its previous comments, the Committee notes with interest the information provided by the Government in February and April 2007 on the consultations held by the Labour Advisory Board on matters concerning the activities of the ILO, including issues related to international labour standards. The Government also states that no arrangements have been made so far for training. *The Committee hopes that the Government will continue providing information on the measures taken to ensure effective tripartite consultations within the meaning of the Convention, including further information on the consultations held by the Labour Advisory Board on each of the subjects listed in Article 5 during the period covered by the next report.*

## Guinea

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2005 observation which read as follows:

1. *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, paragraph 1, of the Convention, including precise information on the activities of the Advisory Committee on Labour and Social Legislation.*

2. *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 paragraphs 125 and 126 of the General Survey of 2000 on tripartite consultation). 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, paragraph 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 PRODIAP 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.*

## Iceland

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)**

1. *Article 5, paragraph 1(b), of the Convention. Tripartite consultations required by the Convention. Submission to Parliament.* The Committee notes the indications provided by the Government in relation to the matters raised in its 2006 observation on the obligation to submit the instruments adopted by the Conference to Parliament. It notes with interest that the Government has decided that a submission to Parliament will be preceded by effective consultations on the proposed instruments.

2. *Article 5, paragraph 1(c). Consultations on unratified Conventions and Recommendations.* The Committee further notes the detailed information on the tripartite consultations held on the prospect of ratification of the labour inspection Conventions (Conventions Nos 81 and 129) and the Termination of Employment Convention, 1982 (No. 158). With regard to the Labour Inspection Convention, 1947 (No. 81), the Icelandic ILO Committee is examining the reply given by the Office in March 2007 in response to a request for clarification. With regard to Convention No. 158, the Ministry for Social Affairs requested the Institute for Gender Equality and Labour Law of the Bifrost University to draft guidelines concerning the termination of employment in light of the spirit of Convention No. 158. The draft will be put on the agenda of the Icelandic ILO Committee for discussion. *The Committee notes with interest the information provided and commends the approach of the Government and the social partners in providing that effective tripartite consultation be held on the measures that might be taken to promote the implementation and ratification, as appropriate, of Conventions and Recommendations.*

## Indonesia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1990)**

1. *Tripartite consultations required by the Convention.* In its 2005 observation, the Committee requested information on the activities in relation to the matters covered by the Convention of the Tripartite Cooperation Institution (LKS), established based on Government Regulation No. 8 of 2 March 2005 and other tripartite bodies. In its reply, received in August 2007, the Government indicates that Government Regulation No. 8/2005 established the minimum requirements for membership of the LKS. The Government indicates, however, that the composition of the tripartite body has proved difficult to constitute, as obstacles are faced in finding workers' representatives to participate in the national tripartite consultative body, which were eligible, further to the requirements established by the aforementioned regulation. In this light, the Government indicates that it has set up a new provisional tripartite consultative body which functions as a normal institution but has had limited discussions.

2. The Committee understands that the LKS has not been functioning efficiently and the new ad hoc tripartite body has been established in January 2007 in order to review Government Regulation No. 8 of 2005. *The Committee hopes that the Government and the social partners will make appropriate arrangements to ensure "effective consultations" between social partners on the matters covered by the Convention (Article 5, paragraph 1, of the Convention) to the satisfaction of all the parties concerned. It refers to its previous comments and asks the Government to provide more specific and detailed information on the measures taken to ensure effective tripartite consultations on international labour standards, including further information on the consultations held on international labour standards during the period covered by the next report, specifying their subject and frequency and the nature of reports or recommendations resulting from such consultations.*

## Malawi

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1986)**

*Tripartite consultations required by the Convention.* The Committee notes the information provided by the Government's report received in September 2007 in relation to its previous observation. The Government indicates that it always carries out consultations with the social partners as stipulated in the Labour Relations Act regarding replies to the questionnaires concerning items of the agenda of the Conference, the proposals to the National Assembly on the instruments adopted by the Conference and all reports that are made to the ILO under article 22 of the Constitution. The

Committee further notes that the Government is in the process of consultations aimed at ascertaining those Conventions and Recommendations to which effect has not yet been given and to consider measures to be taken to promote their ratification and implementation. It also notes that the Government did consult with the social partners concerning the denunciation of some ratified Conventions. Due to the expiration of the time limit to communicate the intention to the Office, the denunciation did not take place. The Government indicates its intention to consult again at the appropriate time. The Committee recalls that the ILO Governing Body recommended to denounce Conventions Nos 50, 64, 65, 86, 104 and 107 concerning indigenous workers and to ratify the most updated instrument, Indigenous and Tribal Peoples Convention, 1989 (No. 169). It also recalls that in its 2005 direct request on the Underground Work (Women) Convention, 1935 (No. 45), the Government was invited to give favourable consideration to the ratification of the Safety and Health in Mines Convention, 1995 (No. 176), which shifts the emphasis from a specific category of workers to the safety and health protection of all mineworkers, and in turn to denounce Convention No. 45. ***The Committee invites the stakeholders concerned to hold tripartite consultations for the re-examination of unratified Conventions – such as Conventions Nos 169 and 176 – so that those measures envisaged to promote, as appropriate, their implementation, ratification, or denunciation can be considered (Article 5, paragraph 1(c) and (e), of the Convention).*** The Committee also recalls that the technical assistance of the Office is available to the Government and the social partners on these matters.

## Pakistan

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)***

*Effective tripartite consultations.* In its 2005 observation, the Committee requested the Government to supply a detailed report on the progress achieved in guaranteeing effective tripartite consultation on the matters covered by the Convention in a manner satisfactory to all the parties concerned. In its reply, the Government indicates that the process of the consolidation and simplification of labour laws is being finalized on the basis of recommendations and proposals sought from all the stakeholders of the industrial relations system. Moreover, tripartite boards at the federal and provincial levels offered their views and suggestions regarding the revision of the legislation. The Government convened a number of seminars, workshops and meetings of the representative organizations of employers and workers to obtain their comments on six draft labour laws. The main labour policy documents were prepared and finalized with tripartite consultation. The report also contains a detailed list of the tripartite bodies provided for in the various labour laws. The Committee welcomes the information provided on the consultation and cooperation activities mentioned by the Government as a basis for promoting tripartite consultation on economic and social policy at the national level. Nevertheless, the information provided by the Government on these activities does not directly refer to the tripartite consultations on international labour standards required by the Convention. ***The Committee therefore asks the Government to give particulars of the consultations held on each of the matters relating to international labour standards referred to in Article 5 of the Convention, including information on reports or recommendations made as a result of these consultations.*** The Committee recalls that certain of the matters covered by the Convention (replies to questionnaires, submissions to *Majlis-e-Shoora* (Parliament), reports to be made to the ILO) imply annual consultation, while others (re-examination of unratified Conventions and Recommendations, proposals for the denunciation of ratified Conventions) involve less frequent examination.

## Sao Tome and Principe

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)***

*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, paragraph 1, of the Convention, including information on the reports or recommendations made on international labour standards as a result of such consultations.***

## 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 2004 observation which read as follows:

1. *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).***

2. 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)**

1. *Article 2 of the Convention. Strengthening tripartism and social dialogue.* In relation to the 2005 observation, the Committee notes the Government's report received in January 2007, and the texts of the Tripartite Act (Act No. 103/2007 of 9 February 2007) and of the Standing Orders of the Economic and Social Council of the Slovak Republic forwarded by the Government in April 2007. The Committee also notes the observations of the National Union of Employers (RUZ) received in June 2007, on the failure of the Government to properly consult with its social partners while amending the sectoral bargaining mechanism and the Government's reply received in September 2007. The Committee notes that the new established Economic and Social Council aims to promote social dialogue as a democratic means to achieve economic and social development, employment creation and securing social peace. ***The Committee hopes that the Economic and Social Council will promote and reinforce tripartism and social dialogue in the country and that the Government will also specify in its next report how the Economic and Social Council has been involved in the consultations required by the Convention.*** In this respect, the Committee recalls that the consultative procedures must be effective, that is, they must provide employers' and workers' organizations with an opportunity to express their views usefully on all the matters covered by the Convention.

2. *Article 5, paragraph 1. Tripartite consultations required by the Convention.* The Committee notes that the denunciation of Convention No. 34 was registered on 25 July 2007. It further notes that the Government indicates that the proposals of the Confederation of Trade Unions of the Slovak Republic (KOZ SR) to ratify Conventions Nos 135, 150, 151, 154, 158 and 181 will be reconsidered in relation to the national legislation of the Slovak Republic. ***The Committee asks the Government to include in its next report detailed information on the content and outcome of the tripartite consultations held on each of the matters covered by Article 5, paragraph 1, of the Convention and in particular on the perspectives of ratifying the abovementioned Conventions (Article 5, paragraph 1(c)).***

## Swaziland

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)**

1. *Articles 2 and 5 of the Convention. Strengthening social dialogue.* The Committee notes the Government's report received in January 2007 indicating that the institutionalization of social dialogue has been approved by the Cabinet and that the High-level Social Dialogue Steering Committee has commenced its work and is chaired by the Deputy Prime Minister. An inter-ministerial secretariat has also been established and is headed by the Commissioner of Labour. ***The Committee welcomes the establishment of the High-level Social Dialogue Steering Committee and would appreciate receiving information in the Government's next report on its activities, as well as on the impact of other measures taken to improve social dialogue in the country and to implement effective tripartite consultation within the meaning of the Convention.***

2. *Article 5, paragraph 1(b). Prior tripartite consultation on proposals made to the National Assembly.* The Committee notes that some instruments adopted by the Conference at its 82nd, 86th, 88th, 89th, 90th, 91st and 92nd Sessions were submitted to the House of Assembly on 27 February 2007. The Committee recalls that, for those States which have already ratified the Convention, effective prior consultations have to be made on the proposals made to the competent authorities in connection with the submission of the instruments adopted by the Conference. Governments have complete freedom as to the nature of the proposals to be made when submitting the instruments but, 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 formulate their opinions before the Government finalizes its decision (please refer to paragraph 89 of the Committee of Experts' General Report of 2004, as well as Part VII of the 2005 *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*). ***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 House of Assembly when submitting the instruments adopted by the Conference, as required by the Convention.**

3. *Article 5, paragraph 1(e). Other tripartite consultations required by the Convention.* In its report, the Government indicates once again that the tripartite consultation required by the Convention concerning the denunciation of the Recruiting of Indigenous Workers Convention, 1936 (No. 50), the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64), the Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65), and the Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104), and concerning the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), has not been undertaken so far. ***The Committee once again expresses interest in being kept informed of any developments in this regard.***

## Togo

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)**

The Committee notes with regret that the Government’s report has not been received. It must therefore repeat its 2004 observation which read as follows:

1. *Consultation procedures.* The Committee noted in 2004 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.***

2. *Tripartite consultations required by the Convention.* The Committee also noted the information supplied by the Government on the activities of the National Labour Council. It noted that the information was not specific enough to enable it to assess the effect given to this priority Convention. ***The Committee asks the Government to provide information on the consultations held on each of the matters set out in Article 5, paragraph 1, of the Convention, specifying their purpose, and frequency, and the nature of any reports or recommendations resulting from the consultations.***

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

## Turkey

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)**

1. *Effective tripartite consultations.* The Committee takes note of the information contained in the Government’s report received in October 2006, and the detailed comments and supplementary information provided thereon by the Turkish Confederation of Employer Association (TİSK), and the Confederation of Turkish Trade Unions (TÜRK-İŞ). The Committee notes the activities undertaken further to the development and review of Turkey’s labour legislation. In this regard, the Committee recalls the establishment of a Tripartite Consultative Committee, which seeks to “ensure effective consultations between the Government, employers, public employees and confederation of trade unions in developing labour peace and industrial relations”. The Committee notes with interest the decisions taken by the Tripartite Consultative Committee with respect to contributing to the development of national legislation giving effect to international labour standards. ***The Committee requests that it continues to be kept informed of the outcomes of consultations in this, and other tripartite bodies, on such matters stipulated under Article 5 of the Convention.***

2. The Committee observes the concern expressed by TİSK whereby it finds that there are no initiatives to include social partners in the negotiations with the European Union on matters related to working life, in particular on “Social Policy and Employment”, during, what it considers to be, one of the most intensive phases in the integration process triggered by Turkey’s membership negotiations with the European Union. TİSK considers that social partners should be able to participate directly through a mechanism that would allow their views to contribute to, and be reflected in, the preparation of the strategies and the commitments in relation to this process. In this regard, the Committee recalls that the 90th Session of the International Labour Conference (June 2002) adopted a resolution concerning tripartism and social dialogue which provides that these methods 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 on which social partners play a direct, legitimate and irreplaceable role. The Committee thus invites the Government and social partners to promote and reinforce tripartism and social dialogue, with a view to ensuring adequate consideration has been given to the social concerns of all stakeholders, under the procedures covered by the Convention.

## Ukraine

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

1. *Strengthening social dialogue. New tripartite council.* The Committee takes note of the Government's report received in October 2006. It notes with interest that, by Decree of the President of Ukraine of 29 December 2005 on the Development of Social Dialogue in Ukraine and the Law of August 1993 on Collective Agreements and Contracts, the National Social Partnership Council was dissolved and the National Tripartite Socio-Economic Council was established. The Government also adopted the regulatory instruments to give effect to the tripartite National Council. A draft law on fundamental principles of social dialogue in Ukraine was elaborated by the National Tripartite Socio-Economic Council. **The Committee invites the Government to provide in its next report up to date information on the content and outcome of the consultations held in the National Tripartite Socio-Economic Council on matters related to international labour standards.**

2. *Article 5, paragraph 1(a) and (c) of the Convention. Tripartite consultation required by the Convention.* The Committee further notes with interest that, as a result of the tripartite consultations, the ratification of Conventions Nos 131 and 173 was registered in March 2006. The Government reports that, under the framework of the tripartite General Agreement for 2006–09, it is preparing the submission for ratification of the European Social Security Code, as well as Conventions Nos 102, 117, 139 and 162. The Government also recalls that Conventions Nos 152, 155 and 161 are being examined. **The Committee hopes that the Government's next report will include information on the progress made with regard to the re-examination of non-ratified Conventions.**

3. The Committee notes that the Government indicates in its report that no consultations had been held for the preparation of the Government's replies to questionnaires concerning items on the agenda of the Conference, nor on the Government's comments on proposed texts to be discussed by the Conference, as requested by *Article 5, paragraph 1(a)*, of the Convention. **The Committee hopes that the appropriate arrangements will be made for the inclusion of this matter in the tripartite consultations with the social partners and invites the Government to provide information in its next report on any progress made in this regard.**

## United States

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1988)**

1. *Follow-up of the discussion at the 96th Session of the International Labour Conference (June 2007).* Subsequent to its 2006 observation, the Committee notes the conclusions of the tripartite discussion that took place in the Conference Committee in June 2007. The Conference Committee trusted that the Government and the social partners would deepen their dialogue on all matters covered by the Convention in order to engage in a review of the manner in which the Convention was applied in practice. The Conference Committee thus hoped that the report for examination by the Committee of Experts would include information on the initiatives taken to give satisfaction to all parties involved in the consultations required by the Convention. To this end, the Government provided a detailed report, on which the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) forwarded its comments on 25 September 2007 and the Government responded in a communication received on 15 November 2007.

2. *Effective tripartite consultations.* The Government reiterated that it was prepared to review the manner in which the Convention was being applied to ensure that all stakeholders, including the AFL–CIO, take appropriate measures to achieve a satisfactory application. The Government indicates that since the period covered by its last report, the Department of Labor held three meetings of the Consultative Group, one of the two subgroups of the Tripartite Advisory Panel on International Labor Standards (TAPILS). A meeting was held on 24 September 2007 to engage in an open and frank discussion of the implementation of the Convention in light of the conclusions of the Committee of Experts and the Conference Committee. In this regard, the AFL–CIO indicates that it is too early to tell whether the meeting signals the beginning of a serious effort to ensure effective consultations, as the Convention requires. The AFL–CIO reiterates that the effectiveness of tripartism should be measured by the ratification of Conventions and refers to *Article 5, paragraph 1(b)–(c)*, of the Convention. The AFL–CIO considers that the Government is not engaging in effective tripartite consultations, if it makes feeble attempts or none at all to move the submission of Conventions to the Senate or periodically re-examine the measures that might be taken towards ratifications of unratified Conventions. In its reply of 15 November 2007, the Government states that the ratification of Conventions is a sovereign and discretionary act. It refers to paragraph 85 of the 2000 General Survey on tripartite consultation in which the Committee of Experts noted that the obligation stemming from article 19 of the Constitution to submit the instruments adopted by the Conference to Parliament does not require governments to propose ratification – or even application – of the instruments under consideration. The Government indicates that this discretion applies even for the case of the ILO's fundamental Conventions, notwithstanding the obligation of governments to respect, promote and realize the principles that are the subject of those Conventions. The Committee notes that the Government's report indicates that no instruments were submitted to the competent authorities during the reporting period and that no meetings of TAPILS were held during the

reporting period with respect to the re-examination, at appropriate intervals, of unratified Conventions and of Recommendations. ***The Committee thus reiterates its previous invitation to the Government and social partners to hold effective consultations on the proposals made to Congress when submitting the instruments adopted by the Conference (Article 5, paragraph 1(b), of the Convention). It further invites the stakeholders concerned to hold tripartite consultations for the re-examination of unratified Conventions and Recommendations to which effect has not yet been given, so that it can consider what measures might be taken to promote their implementation and ratification, as appropriate (Article 5, paragraph 1(c), of the Convention).*** In this regard, the Committee recalls, as did the Conference Committee, that an updated document including the results of tripartite consultations had been submitted to the Senate Foreign Relations Committee in January 2007, with a view to obtaining consent for the ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In this respect, the Committee notes with interest that the Department of Labor pledged, at the meeting held on 24 September 2007, to organize a tripartite meeting at which the Departments of State and Justice would discuss the current difficulties with the social partners with regard to the matters of treaty law and procedure potentially affecting not only ratification of Convention No. 111 but other Conventions as well. The Government also announced its intention to resume consultations in TAPILS on the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), as soon as the internal governmental review had been completed. ***The Committee reiterates its interest in being kept informed, through the Government's next report, on any progress made with regard to the abovementioned Conventions, as well as on the initiatives taken to give satisfaction to all parties involved in the consultations required by the Convention.***

## Uruguay

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1987)***

1. *Effective tripartite consultations.* The Committee notes the Government's report for the period ending May 2006 and the observations of the Inter-Union Assembly of Workers – National Convention of Workers (PIT–CNT), and the Government's reply.

2. *Reports on the application of ratified Conventions.* The Committee notes that, according to the PIT–CNT, tripartite consultations do not operate efficiently due to the lack of initiative by the Government. In this respect, the PIT–CNT indicates that the reports for 2006 were communicated on 31 August, which made it impossible for the workers' organization to study and analyse them. According to the PIT–CNT, if reports are brought to their knowledge less than 24 hours before they are transmitted to the ILO, the requirements of *Article 5 of the Convention* are not being respected in terms of consulting workers' organizations on the reports that have to be provided by the Government. In 2005, the PIT–CNT transmitted its observations directly to the ILO by electronic mail. The Government reports that the Tripartite Working Group held 13 meetings in 2004, 11 meetings in 2005 and four meetings during the period under consideration in 2006. The Government acknowledges that certain reports provided in 2006 had to be communicated to the social partners on the same dates that they were to be sent to the ILO. With regard to the functioning of the Tripartite Working Group, comments such as those made in 2006 had not previously been submitted to it. The Government indicates that it has sought solutions in practice for the holding of a seminar on international labour standards to enable those involved to understand the importance of the presentation of reports, and on other processes for the formulation of standards so as to provide the necessary information within the time limits established by the ILO.

3. *Re-examination of unratified Conventions and of Recommendations.* In the view of the PIT–CNT, although recognizing that progress has been made in relation to the previous situation, it is also necessary to re-examine unratified Conventions and the application of certain Recommendations that have not yet been given effect through the adoption of national provisions for their implementation with greater rapidity and more in-depth analysis than is currently the case. The Government indicates that consultations were held on the agenda of the 93rd and 95th Sessions of the Conference, the proposals made to Parliament with regard to Recommendations Nos 194 and 195 and on the ratification of Conventions (in 2004 and 2005, the ratifications were registered of Conventions Nos 167, 181 and 184; moreover, the possibility of ratifying Conventions Nos 158, 183 and 185 was considered).

4. *Administrative support.* In the view of the PIT–CNT, although acknowledging that the convening of meetings is notified by electronic mail one week beforehand, there are certain difficulties in gaining access to the materials necessary to be able to hold a really effective meeting and they are generally not available prior to the meeting, leading to difficulties in holding the meeting and delays and hold ups in the analysis and decisions on the various matters. In its reply, the Government indicates that it shares the concerns of the workers in relation to the administrative shortcomings and material support provided for the Tripartite Working Group, further indicating that the installation of computer equipment is envisaged in the near future.

5. The Committee recalls that in its view "effective consultations" are those which enable employers' and workers' organizations to put forward their opinions meaningfully on matters relating to the activities on international labour standards referred to in *Article 5, paragraph 1*, of the Convention. ***The Committee hopes that the Government and the social partners will be able to provide information on the initiatives taken to give satisfaction to all the parties concerned in the consultations required by the Convention. In this respect, the Committee trusts that the Government***

and the social partners will examine the procedures that ensure that the tripartite consultations required by the Convention have been held on the issue of the ratification or implementation of the Conventions and Recommendations that are being examined in the Tripartite Working Group, and that the draft reports are communicated to the social partners sufficiently in advance so that their comments can be included directly (Article 5, paragraph 1(c) and (d), of the Convention). It also hopes that the next report will contain updated information on the manner in which the administrative support, as required by the Convention for the consultation procedures established, is provided (Article, 4, paragraph 1).

## Bolivarian Republic of Venezuela

### Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

1. *Article 1 of the Convention. Representative organizations.* Further to the Committee's 2006 observation, the Government has sent an early reply in a report received in August 2007. The Committee notes the information contained in the report which insists that social dialogue is being diversified and broadened. Social dialogue has included meetings between regional and sectoral chambers and national, regional and local authorities. The Government states that social dialogue is possible under the present conditions, given the coexistence of solid and independent employers' and workers' organizations which enjoy full respect of the principles of freedom of association and collective bargaining. The Committee refers to the outstanding issues mentioned in the comments on Conventions Nos 87 and 98. In its 2003, 2005 and 2006 observations on Convention No. 144, the Committee also referred to the resolution concerning tripartism and social dialogue (adopted by the Conference at its 90th Session in 2002), which emphasizes that social dialogue and tripartism have proved 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. ***In this context, the Committee trusts that the Government will include in its next report on Convention No. 144 information on the measures adopted to ensure that the consultations required under this Convention are held with "representative organizations" enjoying the right of freedom of association.***

2. In this respect, the Committee hopes that the Government will be able to provide its remarks on the comments of the International Organisation of Employers (IOE) which the Office transmitted in October 2007. The IOE highlights the interest shown by the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) in strengthening its relations and collaboration with the Government and in fostering genuine social dialogue within the meaning of the Convention.

3. *Article 5, paragraph 1(b). Tripartite consultations prior to submission to the National Assembly.* In its last report, the Government included a further copy of the communication of February 2006, addressed by the Ministry of Labour to the Ministry of Foreign Affairs, asking that steps be taken to have the instruments still outstanding submitted to the National Assembly. The Committee notes that no reply was received to this communication and that no steps have yet been taken to submit the instruments concerned. ***The Committee asks the Government once again to report on the effective consultations that will be held with the social partners on the proposals put to the National Assembly when the instruments adopted by the Conference are submitted.***

4. *Other tripartite consultations required under the Convention.* In its report, the Government refers to consultations concerning minimum wage fixing and occupational health and safety, collective agreements in the construction and oil sector and business round tables. ***Without prejudice to the comments made on the application of other Conventions, the Committee reiterates its interest in examining, in the Government's next report, information relating to the effective tripartite consultations which are to be held on the other matters listed in Article 5, paragraph 1, of Convention No. 144.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 144** (Argentina, Azerbaijan, Bahamas, Barbados, Benin, Brazil, China: Macau Special Administrative Region, Costa Rica, Côte d'Ivoire, Djibouti, Egypt, France: French Polynesia, New Caledonia, Guyana, Ireland, Jamaica, Japan, Jordan, Kazakhstan, Republic of Korea, Malaysia, Mozambique, Peru, Saint Kitts and Nevis, Senegal, Serbia, Trinidad and Tobago, Uganda).

## Labour Administration and Inspection

### General observations

#### **Labour Inspection Convention, 1947 (No. 81)**

*Articles 5(a) and 21(e) of the Convention. Effective cooperation between the labour inspection services and the justice system.* The Committee notes that information on judicial decisions concerning the application of legal provisions relating to conditions of work and the protection of workers while engaged in their work is reported only rarely to the International Labour Office. It wishes to draw attention to Paragraph 9(e) of Recommendation No. 81, which indicates that the statistics of violations and penalties to be included in annual labour inspection reports should include the number of infringements reported to the competent authorities, the number of convictions, and particulars of the nature of the penalties imposed by the competent authorities in the various cases (fines, imprisonment, etc.).

The effectiveness of the binding measures taken by the labour inspectorate depends to a large extent on the manner in which the judicial authorities deal with cases referred to them by, or at the recommendation of labour inspectors. It is therefore indispensable for an arrangement to be established whereby relevant information can be notified to the labour inspectorate so that, on the one hand, it can review where necessary its criteria for assessing situations in which, with a view to bringing an end to a violation, it would be more appropriate to use other means than prosecution in the courts or the recommendation that legal action be taken and, on the other, it can take measures to raise the awareness of judges concerning the complementary roles of the courts and the labour inspectorate, respectively, in achieving the common objectives of the two institutions in the field of conditions of work and the protection of workers.

Cooperation between the labour inspection services and the justice system is necessary to ensure the enforcement of legal provisions relating to conditions of work and the protection of workers in cases where the other means of action of the labour inspectorate, such as advice, notifications and warnings, have not been effective. The Committee refers in paragraph 158 of its General Survey of 2006 on labour inspection to the measures taken to develop such cooperation, the impact of which is reflected in the annual reports on the work of the labour inspection services of a few countries. It also refers to criticisms by workers' organizations of the inadequate level of support given by the courts to the labour inspectorate in other countries.

Effective cooperation between the labour inspection services and the justice system can be achieved through the adoption of legal provisions and the implementation of educational measures and the exchange of information.

For example, the legislation could define: (i) cases in which the representative of the public prosecutor may either issue a prior warning to the entity responsible for a violation or, within a reasonable period, refer reports of violations by labour inspectors to the competent court; (ii) cases in which labour inspectors may seek a judicial ruling to give injunctions or administrative fines executory force; and (iii) cases in which interim daily penalties for non-compliance may be imposed until the measures ordered by the labour inspector have been given effect.

Educational measures and the exchange of information could, for example, take the form of the organization of training sessions during which labour inspectors would be familiarized with: the various judicial remedies available in social matters; essential legal issues, such as debarment and time limits on the exercise of a right; and procedures for the enforcement of court orders. At the level of the various courts, labour inspectors could be provided with the opportunity to describe specific cases to judicial staff so as to illustrate the serious human, social and economic consequences that may result from negligence or the deliberate violation of legal provisions relating to conditions of work.

Individual or collective petitions by workers concerning the application of legal provisions relating to conditions of work and the protection of workers while engaged in their work may also be submitted directly to the competent judicial bodies where the legislation so provides. Information on relevant judicial decisions is also useful to the labour inspectorate as an additional element in assessing the extent to which the relevant legal provisions are applied in workplaces liable to inspection.

*The Committee hopes that measures to promote effective cooperation between the labour inspection services and the justice system will be taken with a view to encouraging due diligence and attention in the treatment by judicial bodies of violations reported by labour inspectorates, as well as disputes in the same fields referred directly to them by workers and their organizations. The Committee also hopes that a system for the recording of judicial decisions that is accessible to the labour inspectorate will enable the central authority to make use of this information in pursuance of its objectives and to include it in the annual report, as envisaged in Article 21(e). Governments are requested to provide information on the measures adopted or envisaged to achieve the above objectives, together with any relevant documentation.*

#### **Labour Inspection (Agriculture) Convention, 1969 (No. 129)**

*Articles 12, paragraph 1, and 27(e) of the Convention. Effective cooperation between the labour inspection services in agriculture and the justice system.* The Committee notes that information on judicial decisions concerning the application of legal provisions relating to conditions of work and the protection of agricultural workers while engaged in

their work is reported only rarely to the International Labour Office, despite the request in the report form for the Convention in this respect. Many governments indicate that such information is not available.

The effectiveness of the binding measures taken by the labour inspectorate depends to a large extent on the manner in which the judicial authorities deal with cases referred to them by, or at the recommendation of labour inspectors. It is therefore indispensable for an arrangement to be established whereby relevant information can be notified to the labour inspectorate so that, on the one hand, it can review where necessary its criteria for assessing situations in which, with a view to bringing an end to a violation, it would be more appropriate to use other means than prosecution in the courts or the recommendation that legal action be taken and, on the other, it can take measures to raise the awareness of judges concerning the complementary roles of the courts and the labour inspectorate, respectively, in achieving the common objectives of the two institutions in the fields of conditions of work and the protection of workers.

Cooperation between the labour inspection services in agriculture and the justice system is necessary to ensure the enforcement of legal provisions relating to conditions of work and the protection of agricultural workers in cases where the other means of action of the labour inspectorate, such as advice, notifications and warnings, have not been effective. The Committee refers in paragraph 158 of its General Survey of 2006 on labour inspection to the measures taken to develop such cooperation, the impact of which is reflected in the annual reports on the work of the labour inspection services of a few countries. It also refers to criticisms by workers' organizations of the inadequate level of support given by the courts to the labour inspectorate in other countries.

Effective cooperation between the labour inspection services and the justice system can be achieved through the adoption of legal provisions and the implementation of educational measures and the exchange of information.

For example, the legislation could define: (i) cases in which the representative of the public prosecutor may either issue a prior warning to the entity responsible for a violation or, within a reasonable period, refer reports of violations by labour inspectors to the competent court; (ii) cases in which labour inspectors may seek a judicial ruling to give injunctions or administrative fines executive force; and (iii) cases in which interim daily penalties for non-compliance may be imposed until the measures ordered by the labour inspector have been given effect.

Educational measures and the exchange of information could, for example, take the form of the organization of training sessions during which labour inspectors in agriculture would be familiarized with: the various judicial remedies available in social matters; essential legal issues, such as debarment and time limits on the exercise of a right; procedures for the enforcement of court orders. At the level of the various courts, labour inspectors could be provided with the opportunity to describe specific cases to judicial staff so as to illustrate the serious human, social and economic consequences that may result from negligence or the deliberate violation of legal provisions relating to conditions of work in agriculture.

Individual or collective petitions by workers concerning the application of legal provisions relating to conditions of work and the protection of agricultural workers while engaged in their work may also be submitted directly to the competent judicial bodies where the legislation so provides. Information on relevant judicial decisions is also useful to the labour inspectorate as an additional element in assessing the extent to which the relevant legal provisions are applied in agricultural workplaces liable to inspection.

*The Committee hopes that measures to promote effective cooperation between the labour inspection services and the justice system will be taken with a view to encouraging due diligence and attention in the treatment by judicial bodies of violations reported by labour inspectors in agriculture, as well as disputes in the same fields referred directly to them by agricultural workers and their organizations. The Committee also hopes that a system for the recording of judicial decisions that is accessible to the labour inspectorate will enable the central authority to make use of this information in pursuance of its objectives and to include it in the annual report, as envisaged in Article 27(e). Governments are requested to provide information on the measures adopted or envisaged to achieve the above objectives, together with any relevant documentation.*

## Argentina

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)**

The Committee takes note of the Government's report for the period ending in June 2006. It notes that the Government has replied in part to its previous comments and those of the Latin American Confederation of Labour Inspectors (CIIT) sent in a communication of 2002 on the application of the Convention. It notes with interest the Government's information regarding the positive effects that the improvement in Argentina's economy has had on employment and compliance with labour legislation thanks to intensified supervision of the registration and regularization of workers.

*Regional economic cooperation and development of the labour inspection system.* With reference to its previous comments on the issues raised by the CIIT, the Committee notes that a National Plan for the regularization of workers under way since 2003 has made it possible, thanks to the mobility of labour inspectors, to carry out large-scale regularization operations and joint inspection visits involving various specializations and levels of competence in the context of the integral labour inspection system established by Act No. 25.877 of 2004. Furthermore, appropriate

cooperation has enabled the inspection services and other public bodies including the Federal Public Revenue Administration (AFIP), the National Migration Directorate and the Supervisory Authority for Occupational Risks, to exchange useful information for the performance of their respective duties. As regards the conditions of work and service of labour inspectors, which the CIIT criticized, the Government has provided information and documents pertaining to measures envisaged at the regional level within MERCOSUR with a view to bringing about improvements in every member country (Argentina, Brazil, Paraguay and Uruguay). A two-year regional labour inspection plan has been proposed by the Government on the basis of recommendations likewise issued at regional level in 2005 (MERCOSUR/CMC/Rec 01/05 and CMC/Rec 02/05, 2005). One of the plan's objectives is to establish a regional centre for the training of inspectors in particularly sensitive matters such as undeclared work, discrimination on grounds of race, religion, sex and disability, migrant labour and child labour. There is also to be training on the programming and conduct of inspection visits with suitable advice to be provided to employers. The regional centre is to have a virtual Internet portal that all inspection services of member countries can access.

The plan also provides for an annual programme of joint inspection visits of particularly sensitive activities in the member countries, particularly in border areas. A system for the collection and processing of statistical data is to be set up so that an annual regional inspection report can be published. Advocacy campaigns on workers' rights are also scheduled.

With regard to the insufficient numbers of inspection staff and the obstacles to the performance of the tasks involved in enforcing the legislation on working conditions, the Committee notes the Government's information that 300 inspectors are distributed throughout the territory, in accordance with needs. It notes that Recommendation MERCOSUR/CMC/Rec 01/05 establishes the elements to be systematically checked in the course of inspection visits in member countries. The Committee notes with interest that these areas include, as required by the Convention, working conditions and the protection of workers (general conditions and occupational safety and health).

The Committee also notes with interest the establishment in 2003 of a tripartite group on occupational safety and health to be responsible for the framing, evaluating and monitoring of policy on working conditions in the construction sector. It notes in this connection that thanks to a diagnosis carried out with technical assistance from the Office, there was a significant increase in the number of inspections carried out on worksites between 2003 and 2005. Furthermore, a national safety and health plan has been set up in the sector, and in November 2004, in cooperation with local authorities, occupational associations and trade associations, a massive awareness campaign was launched "For construction sites to be visible from the street", with a free telephone helpline for the public.

Further to its comments of 2006 under Convention No. 182 on the activities conducted by the Child Labour Control and Inspection Unit, the Committee notes that under the National Plan for the Prevention and Elimination of Child Labour, the labour inspection services are to be reinforced. Furthermore, regional actions have been developed in the context of MERCOSUR, such as a second publicity campaign for the prevention and elimination of child labour, together with an implementation plan, approved by resolution No. 36/06 of 18 July 2006.

***The Committee would be grateful if the Government would continue to provide information on legislative matters and on practical measures taken to strengthen the labour inspection system (status of labour inspectors, conditions of service and career plans, numbers, training, cooperation with other public services or with private institutions, and collaboration with the social partners, equipment, computer and logistic resources of the inspection services). The Government is also asked to take all necessary steps to give full effect to Articles 20 and 21 of the Convention concerning the requirement for the central labour inspection authority to publish and send to the ILO an annual report on the work of the inspection services under its control. Please also report to the Office any progress made in this respect and any difficulties encountered.***

The Committee is addressing a request on other matters directly to the Government.

## Barbados

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)***

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

The Committee notes the Government's report received in January 2005, which responds in part to its previous comments, and the attached observations of the Barbados Employers' Confederation (BEC) and the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB). ***The Committee invites the Government to continue providing detailed information on the application of the Convention, particularly with regard to the following aspects.***

1. ***Staffing and resources of the labour inspectorate.*** The Committee notes that, in the view of the CTUSAB, the number of labour inspectors should be increased and they should be provided with adequate training and additional resources to allow them to do their work effectively. The BEC considers that there is a lack of inspectors to deal with the growing number of complaints. The Government emphasizes that the constantly increasing work load has not been accompanied by the increase in staffing required to handle it. ***The Committee requests the Government to indicate the measures adopted or envisaged to ensure that the number of labour inspectors is sufficient to secure the effective discharge of their duties, particularly in view of the forthcoming adoption of new legislation on occupational safety and health, which should reinforce their functions in this field (Article 10 of the Convention). It also requests the Government to continue to provide information on the measures adopted to furnish labour inspectors with the necessary transport facilities and to reimburse their travelling expenses (Article 11).***

2. *Adequate penalties.* The Committee notes the assurances given by the Government that the question of the provisions respecting penalties will be addressed in the context of the current reform of the labour legislation so as to ensure that the penalties established for violations of the labour legislation are sufficiently dissuasive, in accordance with *Article 18* of the Convention. ***It requests the Government to indicate the progress made in the legislative reform in this connection.***

3. *Publication of an annual report.* The Committee notes that no annual report on the labour inspection services has been supplied to the ILO since the communication in 2001 of the annual reports of the Department of Labour for the years 1997, 1998 and 1999. ***The Committee requests the Government to ensure that an annual report on the inspection services is published and transmitted to the Office within the time limits set out in Article 20 of the Convention and that it contains all the required information, including statistics of occupational diseases, in accordance with Article 21(g) of the Convention.***

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

## Belarus

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)***

*Articles 6 and 11 of the Convention.* *Conditions of service of inspectors and means of action available to the labour inspectorate.* Further to its previous comments on the need to offer pay and working conditions able to attract and maintain in the profession staff who are competent and have the necessary independence to perform their duties, the Committee notes with satisfaction from the Government's report received in October 2006 that labour inspectors' salaries were increased by 21 per cent in 2005, that certain allowances for conditions and length of service have also been increased and that incentives are provided for state inspectors to upgrade their skills. The Committee notes with interest that the amount of resources allocated to duty travel and inspection trips was increased in 2006, and that considerable resources were allocated to improving material and technical equipment, including the renewal of the service vehicles and the purchase of modern computer and office equipment. ***It hopes that the Government will be able to continue to take measures for the improvement of labour inspectors' conditions of service and work, given the country's other priorities and in accordance with the availability of resources, and that it will keep the Office informed.***

A request on another point is being addressed directly to the Government.

## Belgium

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1957)***

The Committee notes the Government's report and the legislative, practical and statistical information on the functioning of the labour inspection system.

1. *Labour inspection methods aimed at promoting a culture of compliance with the law.* According to the Government, the priority areas of labour inspection are occupational safety and health. Furthermore, the regulations concerning welfare at work constitute the basis for inspection activity, and the main instrument for contributing to a better social policy is the improvement of these regulations. The Committee notes with interest the announcement of new inspection methods aimed at fostering compliance with the regulations concerning welfare at work. According to the Government, many employers and enterprises have a positive attitude towards these regulations. In the view of the Government, it is entirely normal and justifiable for public money to be set aside for the provision of staff and funding to assist employers in the proper observance of the regulations, if they are not properly informed of their obligations and do not have a clear understanding of the specific implications of the new regulations. Inspection activities are adapted in the light of indicators such as complaints, serious industrial accidents, occupational diseases and requests for mediation. The initial reaction to these indicators being an attitude of positive encouragement, it is nevertheless considered essential, without discouraging willing employers, to adopt a radical approach towards clearly recalcitrant parties, using appropriate instruments such as the imposition of work stoppages combined with the reporting of contraventions, for example during controls on construction sites and sites where asbestos is being removed.

With regard to recalcitrant employers, the Government's opinion is that only intensive and sustained inspection can change their attitudes and that, although it is logical that the capacity of the inspectorate increases as unwillingness to cooperate increases, it is also morally unjustifiable that this additional capacity should be paid for by the community. Offenders should consequently be made to pay for additional inspections resulting from their unsocial attitude. With this in mind, a first and possibly a second inspection on the same regulations would be free of charge. From the third inspection onwards, the offending party would have to pay for each inspection which it caused, in proportion to the cost. The application of a method combining injunctions and the payment of a deposit where the inspector fears that the employer will not comply with agreements aimed at rectifying the infringement is also worthy of serious consideration. This deposit, which would be refunded when compliance with the injunction was confirmed, would be confiscated in the event of non-compliance and transferred to the insurers, with a view to building up funds so that enterprises which make serious efforts at prevention can be rewarded. The additional administrative burden generated by this inspection method can be limited, according to the Government, through collaboration with the industrial accidents fund or the occupational diseases fund. ***The Committee would be grateful if the Government would provide a copy of any legislative text or***

*regulation adopted with a view to the implementation of the new methods of inspection outlined above, together with figures on their impact in practice.*

2. *Article 5(b) of the Convention. Collaboration between the inspection services and employers for the protection of workers from subcontracting enterprises.* The Committee notes with interest that measures have been adopted via a “prime contractors/subcontractors” safety and health charter, which has been drawn up by a number of employers’ organizations and the aim of which is to achieve optimum integration of safety and health aspects for all subcontracting work through collaboration between the prime contractor and the subcontractor. The principles of prevention, integration, involvement, cooperation, communication and coordination are all applied in the charter. A “contractors’ work” inspection index, the basis of which is chapter IV of the Act of 4 August 1996 on the welfare of workers during the performance of their work, is used to evaluate the commitment of employers to the welfare of external workers who work in their premises, as well as that of the direct employers of these workers. Applications to join this charter are sent to the Department for the Monitoring of Industrial Welfare, which certifies that the applicant enterprise has not been the subject, in the six months preceding the application, of a definitive conviction, an administrative fine or a work stoppage order relating to circumstances occurring during the previous three years which has not been cancelled by the labour inspectorate. This certificate entitles the enterprise to register its name on the website <http://www.chartedeseurite.be>, thus enhancing its image through its positioning as a decent, reliable enterprise investing in the safety and health of workers. It can use the charter logo on its correspondence, bid documents, etc., and it is less liable to visits from the labour inspectorate, since the latter is aware of its efforts in the areas of safety and health at work. The result is fewer industrial accidents and a reduction in insurance premiums.

3. *Article 5(a). Cooperation between the labour inspection services and other organizations with a view to better application of the legislation.* The Committee notes with interest that the inspection services cooperate with other supervisory bodies which have competence in fields other than welfare at work, following an equally radical approach to violations of a less serious nature or committed in other sectors. Such cooperation consists of attracting the attention of such bodies with a view to identify attitudes that systematically seek to evade the law. Social fraud, for example, is a good indicator of general fraud.

*The Committee would be grateful if the Government would continue to supply information on developments in methods relating to the functioning of the labour inspection system and indicate the impact of their implementation, in statistical terms, on the general situation regarding conditions of work and the protection of workers while engaged in their work.*

The Committee is sending a request concerning another point directly to the Government.

## Bolivia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)**

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

Further to its previous comments, and referring in particular to the information available to the ILO, the Committee notes with interest 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 previous comments.*

*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 hopes that the Government will 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 that the Government’s report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes that the Government’s report received on 2 August 2005 does not reply to its comments addressed in 2004. It must therefore repeat its previous observation, which read as follows:

Also 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 with interest, 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.**

## Bosnia and Herzegovina

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1993)**

The Committee notes the Government's report for the period ending in June 2006. Further to its previous observation, it draws the Government's attention to the following points.

1. *Article 12, paragraph 1(a) and (b), of the Convention. Right of free entry of labour inspectors.* A representation submitted to the ILO on 9 October 1998 pursuant to article 24 of the ILO Constitution by the Union of Autonomous Trade Unions (USIBH) and the Union of Metalworkers (SM) alleging violation of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) stated that the federal labour inspectorate and the cantonal labour inspectorate had never been able to obtain the authorization of the cantonal minister responsible for labour to conduct an inspection visit in the factories concerned (Aluminij dd Mostar and Soko dd Mostar) in order to verify the allegations of the abovementioned trade unions. The committee of the ILO Governing Body responsible for examining the representation noted, in particular, that the fact that the cantonal labour inspector was obliged to request the authorization of the cantonal minister before being able to conduct an inspection visit was not in conformity with *Article 12, paragraph 1*, of the Convention and requested that the follow-up to the case be also entrusted to this Committee. The Committee addressed an observation to the Government in 2000 and again in 2001 requesting it to take all appropriate steps as soon as possible to remove the requirement in the legislation whereby labour inspectors must seek authorization from the supervisory authority to exercise their right of entry to workplaces and premises liable to inspection. Since the Government did not reply to this request in its report of June 2002, the Committee invited it to do so in a new observation in 2003, which was repeated in 2004 and 2005. The Government's report sent in 2006 shows that none of the laws on inspections contains any provision obliging labour inspectors to obtain authorization to be able to enter an enterprise. Consequently, if such an authorization has been required, this practice is contrary to the law. The Government also states that random inspections were undertaken on 29 and 30 March 2000 in the two enterprises concerned and that measures were ordered by the chief federal inspector. However, it does not state whether measures were taken, firstly, to penalize the officials responsible for such a practice and, secondly, to avoid any recurrence thereof. **The Government is requested to supply information in this respect in its next report and also any relevant document (copy of any administrative decision or circular containing instructions ensuring the exercise of inspectors' free right of entry to workplaces under their supervision, etc.). The Committee also requests it to indicate the legal provisions which apply specifically to labour inspectors' right of entry to workplaces under their supervision in each of the two entities (Republika Sprska and the Federation of Bosnia and Herzegovina) and in the Brcko District, and to send copies of them.**

2. *Articles 4, 20 and 21. Production and publication by the central authority of an annual general report on the work of the labour inspectorate.* The Committee notes the information from the Government to the effect that the labour inspection system is placed under the control of the authorities in each of the federated entities and the Brcko District, the inspection system comprising bodies acting at the level of the entity and bodies functioning at local level. The Government indicates that a report on the work of the labour inspectorate is drawn up by the central authority of each entity, on the basis of reports drawn up and transmitted by the local inspection bodies. However, in the Federation of Bosnia and Herzegovina, the cooperation between the different bodies in the system at central and local (cantonal) levels is inadequate, and the activity reports are not transmitted by the cantonal inspection bodies. The Committee draws the Government's attention to the need to publish reports on the work of the inspection services, firstly, to evaluate and improve the operation of the system as a whole and, secondly, to be able to allocate adequate resources in the light of the requirements identified and the available resources. **Referring to its previous comments, the Committee asks the Government once again to take the necessary steps to ensure that an annual report on the work of the labour**

*inspectorate is published by the central authority of each entity. It hopes that the Government will soon be in a position to supply such reports to the ILO and that they will contain the information required by each of clauses (a)–(g) of Article 21.*

The Committee is raising a number of other points in a direct request to the Government.

## Brazil

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1989)**

The Committee notes the detailed report supplied by the Government and also the attached documentation. It also notes the information supplied by the Government in reply to comments made by the Gaúcha Association of Labour Inspectors (AGITRA) and by the Association of Labour Inspectors of Minas Gerais (AAFIT/MG) concerning the application of this Convention, received at the ILO on 2 April and 21 July 2004, respectively. The Committee also notes the comments on the application of the Convention made by the Union of Road Transport Workers (Liquids, Gas, Oil and Chemicals) of the State of Rio Grande do Sul (SINDILÍQUIDA/RS), received at the ILO on 29 August 2007 and transmitted to the Government on 11 September 2007. These comments echo those submitted by the AGITRA in 2004, as regards the ineffectiveness of prosecutions and penalties. According to these comments, *Article 13, paragraph 1, and Articles 17 and 18 of the Convention* are not applied inasmuch as situations involving imminent and serious danger to workers are not rectified. Reported contraventions are not sufficiently penalized and the appeals procedure is excessively slow. The trade union also deplores the failure to publish an annual inspection report. It considers it important that statistics regarding contraventions and penalties are made known to the public. ***The Committee requests the Government to forward any comments which it considers relevant in reply to the points raised by the trade union, to enable the Committee to examine them at its next session.***

1. *Article 3 of the Convention. Compatibility of further duties entrusted to labour inspectors with their primary duties.* According to the AAFIT/MG, labour inspectors are required to act as mediators in collective or individual negotiations in the context of labour relations. While acknowledging that these officials may be considered as being in the best position to assist the social partners in the development of the negotiations, the Committee draws the Government's attention to the need to ensure that exercise of the role of mediator does not constitute an obstacle to the exercise of the main function of inspection, which is to enforce the legal provisions relating to conditions of work and the protection of workers and does not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. ***It requests the Government to indicate the manner in which it is ensured that additional mediation duties and administrative duties assigned to inspectors do not obstruct, on account of the staff and the material resources required for this purpose, the performance by inspectors of duties which, by means of controls, advice and technical information to employers and workers, are designed to ensure compliance with the legislation on conditions of work and protection of workers (Article 3, paragraph 2).***

2. *Article 5. Cooperation and collaboration on labour inspection.* The Committee notes the communication of the text of Ministerial Decree Portaria) No. 216 of 22 April 2005 establishing regional committees for collaboration between the regional labour offices and the trade unions and all bodies concerned with the discussion and preparation of an annual inspection plan and the evaluation of the results achieved. ***The Committee notes with interest that partial effect is thus given to this Article of the Convention and it would be grateful if the Government would supply information concerning the practical application of this Decree, especially on the number of committees established and the results of their work, and also indicate the steps taken or contemplated to promote collaboration between the inspection services and the employers or their organizations, in accordance with Article 5(b) of the Convention.***

3. *Articles 6 and 7. Ensuring the probity of labour inspection officials. Qualifications of inspectors.* The Committee notes the information supplied by the Government concerning the activities of the *Corregedoria* – the body responsible for monitoring the probity of officials – in 2004, 2005 and up to August 2006. It notes, however, the claim made by the AAFIT/MG that the Government, in order to fill managerial posts within the labour inspectorate, is acting improperly by recruiting, on the basis of political criteria, temporary staff who do not possess the requisite technical skills, thereby promoting cronyism and the influence of political and economic interests. The organization deplores the fact that inspection visits are being entrusted to trainees. ***Noting the Government's statement that the recruitment of managerial staff in the labour inspectorate is by means of competition, the Committee would be grateful if the Government would indicate how it is ensured firstly, that, in conformity with Article 6, the inspection staff is composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences and, secondly, that, in accordance with Article 7, paragraphs 1 and 2, labour inspectors are recruited with sole regard to their qualifications for the performance of their duties and are adequately trained.***

4. *Articles 10 and 16. Number of inspectors and coverage of economic sectors.* With reference to the comments made by the AGITRA and the AAFIT/MG regarding the inadequate numbers of labour inspectors – which, they claim, is constantly decreasing as the economically active population increases, thereby causing a reduction in the frequency and quality of inspection visits – the Committee notes with interest the creation of 225 new inspectors' posts in 2004 and the opening of competitions to fill 200 new posts between 2006 and 2007. ***The Committee would be grateful if the***

**Government would supply information on changes in the numbers of inspectors and their geographical distribution, in relation to the geographical distribution of the industrial and commercial workplaces liable to inspection.**

5. *Article 11, paragraphs 1(a) and 2.* With regard to the comments made by the AGITRA and the AAFIT/MG regarding the inadequacy of resources made available to the labour inspectors for the performance of their duties and the trifling nature of the allowances paid to them, the Committee notes with interest that daily allowances granted for inspection activities have been re-assessed by Decree No. 5.554 of 4 October 2005 and that inspectors are entitled to the free use, within their areas of jurisdiction, of public and private transport on presentation of their professional card. **The Government is requested to send a copy of the said Decree, to supply information on the impact of its application on the number of inspection visits in workplaces far away from economic centres, and to indicate whether provision has been made for additional unforeseen expenses exceeding the official travel allowances to be reimbursed to inspectors.**

6. *Article 13. Preventive action with regard to occupational safety and health in hazardous work.* The Committee notes Regulation No. 10 on plant and service safety in the electricity industry relating to the prevention of occupational risks in the production and electricity distribution sectors. **The Committee would be grateful if the Government would supply information on the impact of the practical application of this regulation in terms of industrial accidents in the sector concerned, and indicate whether it is envisaged to adopt legislation aimed at substantially improving occupational safety and health in other high-risk sectors, such as construction and public works.**

7. *Articles 17 and 18. Action with regard to reports of contraventions and adequacy of penalties.* According to the AGITRA, the system of prosecutions and the imposition of penalties is ineffective, since the cumbersome and opaque nature of administrative procedures results in impunity for the perpetrators. The AAFIT/MG, for its part, deplors the fact that the monitoring and enforcement powers exercised by inspectors have been replaced by negotiation with the employers. The Committee recalls that although *Article 17, paragraph 1*, establishes the principle of the immediate prosecution of persons responsible for contraventions, it must be left to the discretion of labour inspectors, under the terms of *Article 17, paragraph 2*, to give warning and advice instead of instituting or recommending proceedings. In this respect, decisions are based on criteria such as the nature of the contravention, the circumstances under which it is committed, the attitude of the person responsible with regard to his legal obligations, repeat offences, the consequences of the contravention and the risks that it entails, correct conduct or misconduct, the age of the enterprise, the resources of the employer, etc. Consequently, whenever an inspector considers that advice or warnings are no longer sufficient, he must have the power of recourse to legal proceedings provided for by *paragraph 1*. Also referring to its previous comments regarding the need for a system of dissuasive penalties which are applicable to those guilty of contraventions, the Committee notes the Government's statement that the labour inspection secretariat has submitted several items of draft legislation for examination by the National Congress aimed at re-assessing the amount of penalties. **It requests the Government to inform the ILO of the progress made with regard to these drafts and to supply copies of the final texts.**

8. *Articles 20 and 21. Annual reports.* The Committee notes the information from the Federal Labour Inspection System (SFIT) published in the *Official Journal* on the work of the labour inspectorate for 2004 and 2005 and for January–May 2006, and also data concerning industrial accidents for 2004. **The Committee reminds the Government of its obligation to ensure that an annual report on the work of the labour inspectorate is published and forwarded to the ILO in the form and according to the deadlines prescribed by Article 20 and that such a report should contain the required information on each of the subjects specified by Article 21. It hopes that measures will be taken quickly to give full effect to these provisions of the Convention and that the annual report will henceforth include information such as the number of workplaces liable to inspection and the number of workers employed in them, and also statistics of occupational diseases and industrial accidents, so that the report constitutes an effective tool for evaluating and improving the functioning of the labour inspection system.**

9. *Physical safety of labour inspectors.* The AGITRA and the AAFIT/MG referred to the murder, on 28 January 2004, of three labour inspectors and a driver of the Ministry of Labour during an inspection to a rural establishment suspected of practising forced labour. The above organizations claim that this tragedy is not an isolated case. Rather, it illustrates the adverse working conditions imposed on labour inspectors, in which even their lives are at risk during inspections of certain establishments where their presence is not desired. Certain landowners are claimed to have a privileged relationship with the military police, while others are alleged to use private militia to protect their interests and conceal criminal activity. **The Committee requests the Government to provide information on the investigations carried out and the legal proceedings initiated against those responsible for the murders referred to by the AGITRA and the AAFIT/MG. It requests it to indicate the measures taken to ensure that labour inspectors are protected by the police during inspections in certain industrial and commercial workplaces where their physical safety is not guaranteed.**

## Burkina Faso

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1974)**

The Committee notes the Government's report containing information in reply to its previous comments.

1. *Article 10 of the Convention. Labour inspection staff.* The Committee notes that the labour inspection services have a total staff of 76 inspection officials (41 inspectors and 35 controllers), with 15 inspectors and two controllers employed in the central offices, the others working in the 13 regional labour and social security departments. According to

the Government, six labour inspectors and one controller are on leave of absence, six inspectors are on secondment and another four have been made available to other ministerial departments, while 34 labour inspectors and 33 controllers are pursuing their training at the National School of Administration and Law (ENAM) in Ouagadougou. *The Committee would be grateful if the Government would: (i) supply further information on the distribution of the roles and duties assigned to labour inspectors and controllers based in the central offices of the Ministry and working in the regions, in the light of the inspection duties defined by Article 3, paragraph 1, of the Convention; (ii) send available information on the number and geographical distribution of industrial and commercial workplaces liable to inspection and also of the workers employed therein; or (iii) if such information is not available, take steps to identify and register these workplaces in order to ensure observance of the legislation relating to conditions of work and the protection of workers, and keep the ILO informed of progress made in this respect.*

2. *Article 11, paragraph 2, and Article 16. Reimbursement of labour inspectors' travelling and incidental expenses.* With reference to its previous comments, the Committee notes, in reply to its request for further information regarding the allocation of allowances for business travel to labour inspection officials pursuant to Decree No. 95-395 of 29 September 1985, quoted in each of the previous reports from the Government, that this Decree has been superseded by Act No. 019-2005/AN of 18 May 2005 amending Act No. 013/98/AN of 28 April 1998 establishing the legislation applicable to civil service posts and officials. *The Committee would be grateful if the Government would send a copy of Act No. 019-2005/AN of 18 May 2005 and of any implementing regulations, if applicable, particularly as regards the allocation of travelling expenses to labour inspectors. It also requests the Government to supply further information on means of transport (cars and motorcycles), which, according to its report, were due to be made available in the near future to the inspection services and on practical arrangements for their use for inspection visits.*

3. *Article 12, paragraph 1(a) and (b). Free access of labour inspectors to workplaces liable to inspection.* The Committee notes with satisfaction that, under section 367 of the 2004 Labour Code, inspectors now have the right to enter workplaces liable to inspection and other workplaces, in conformity with the right established by these provisions of the Convention.

4. *Articles 20 and 21. Annual report on the work of the labour inspection services.* With reference to its previous comments, the Committee notes with regret that no annual labour inspection report has been sent to the ILO for many years. *It trusts that the Government will take the necessary steps as soon as possible to ensure, if necessary with technical assistance from the ILO, that an annual report containing the information required by Article 21 of the Convention is published in future and transmitted to the ILO in the manner and within the deadlines prescribed by Article 20.*

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1974)**

The Committee notes the Government's report received on 1 June 2007, and the additional information received on 5 November 2007. It notes that this information relates exclusively to the composition and distribution of the labour inspection staff. Further to its previous comments, in which it drew the Government's attention to the need to adapt the activities of the inspection services to the specific features of the agricultural sector, even if it covers other economic sectors, the Committee notes that nothing appears to have been done in this respect. Moreover, the Government has not been able to provide information, as requested, on the geographical distribution of agricultural enterprises and the workers employed therein. In the absence of such data, no assessment of the extent to which application of the Convention is possible, either by the national authorities with a view to improving coverage, or by the ILO supervisory bodies with a view to fulfilling their function in this respect. As the Committee emphasized in its previous observation, an appreciation of the effectiveness of the labour inspection system in agriculture is necessarily based on knowledge of the needs in this area and on the periodical updating of the relevant information. The obligation for inspection units to provide periodical reports on their activities in agricultural enterprises (*Article 25 of the Convention*) is designed specifically to enable the central inspection authority to follow, supervise and adjust their activities, as well as to allow information on the items listed in *Article 27*, which are specific to the agricultural sector, to be included in the annual general report on inspection activities required by *Article 26*. For more than ten years, no report of this nature has been transmitted to the ILO and no data on the number of agricultural enterprises liable to inspection has ever been provided.

With reference to the Government's indication of the predominance of child labour in agriculture and stock-raising, and that projects to combat this phenomenon mean that labour inspectors are taking on an important role in this field, the Committee suggests that it should take advantage of the implementation of these projects to set in motion measures to revitalize the activities of the labour inspection services in agricultural enterprises. It notes that no information has been provided by the Government in this respect.

*The Committee therefore once again requests the Government to ensure that the labour inspection services have access to data on the number and geographical distribution of agricultural enterprises and the workers employed therein, and to specify the geographical distribution of labour inspectors who in practice discharge their duties in agricultural enterprises.*

*Once again reminding the Government that, when the economic situation of a member State does not allow it to fulfil adequately the requirements of a ratified Convention, it may have recourse to international financial cooperation*

and the technical assistance of the Office, the Committee requests the Government to provide detailed information on the manner in which effect is given in law and practice to each of the provisions of the Convention and to keep the ILO informed of the difficulties encountered and the measures adopted to resolve them.

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

## Cameroon

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

The ILO received on 23 November 2006, the Government's reply to observations from the General Union of Cameroon Workers (UGTC) dated 30 August 2006 which the Committee had examined at its previous session. The Committee notes that new observations reached the ILO from the UGTC on 21 August 2007 and from the Confederation of Labour – Liberty of Cameroon (CGTL) on 12 September 2007. The Committee notes that the observations from these organizations, which the ILO sent to the Government in September 2007, largely concern matters raised in the Committee's observation of 2006. **The Committee hopes that the Government will reply to the latter observation in its report due in 2008.**

1. *Articles 1, 6, 10, 11, 13, 16, 20 and 21 of the Convention. Insufficient staff, pay conditions and means of action of labour inspectors. Annual report on the work of the inspectorate. Inefficient and deteriorating inspection system.* In reply to the UGTC's observations of 2006 on the lack of inspectors and material facilities, the Government indicates that the inspectorate works in all ten provinces of the country and that the new organizational chart of the Ministry of Labour and Social Security provides for inspection services to be established in the departments and in certain districts with a high concentration of labour. Furthermore, five competitions have been held to recruit staff for the labour and social security corps. Only the provincial labour delegates have service vehicles because resources are lacking. In its communication of August 2007, the UGTC again emphasizes the lack of staff and the total absence of material facilities in the premises that house inspectors. The Committee also notes the observations from the CGTL, which raise a matter addressed in 2004 by the Confederation of Public Service Unions (CSP), namely that inspectors' conditions of service and pay expose them to the influence of employers and weaken their authority to issue injunctions. **The Committee hopes that the Government will be in a position in its next report to provide information on progress, particularly regarding the staff and means of action of the inspectorate and the organization and working of the inspection system. Please indicate in particular the measures taken or envisaged to ensure that labour inspectors are independent of all improper external influence.**

**The Committee also urges the Government to take measures to ensure that an annual report on the work of the labour inspectorate, containing all available information on the subjects listed at Article 21 of the Convention, is published and sent to the ILO, in accordance with Article 20. The Committee would be grateful if, to this end, the Government would take measures without delay for defining a method for uniform collection and processing of relevant information, and keep the ILO informed of progress in this regard.**

**Lastly, the Government is also asked to provide information on the results of the reading of the text on the supervisory powers of labour inspectors which, according to the Government's statement in 2005, had been submitted to the National Labour Advisory Committee.**

2. *Article 5(b). Collaboration between labour inspection officials and the social partners.* In its observations sent in August 2007, the UGTC asserts that there is no cooperation at all between labour inspectors, employers and workers. The Committee refers the Government to its previous comment on this matter in which it noted that the Labour Code does not deal with the issue of cooperation in labour inspection, and draws the Government's attention to Part II of Recommendation No. 81, which provides useful guidelines on the nature and type of measures that might be taken to encourage such collaboration, with the employers too, in the area of occupational safety and health. **It would be grateful if, in consultation with the employers and workers, the Government would entertain the possibility of implementing such measures, and asks it to keep the ILO informed of the results of such collaboration.**

## Cape Verde

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)

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

The Committee 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.**

1. *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).**

2. *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, paragraph 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*.

3. *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*.

4. *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)**

The Committee notes with concern that the Government's reports received in March and in June 2006 are identical to the one received in April 2005 and contain no reply whatsoever to the Committee's comments in its observation of 2005. **The Committee therefore urges the Government to report in as much detail as possible on each of the points of its previous observation, which read as follows:**

1. *Legislation.* Further to its previous requests, the Committee observes that the Government reports no progress in the enactment of enabling legislation for the provisions of Labour Code regarding the duties and prerogatives of labour inspectors, or the draft decree issuing the general conditions of service of labour inspectors to which the Committee has been referring for many years. **It hopes that the Government will shortly be in a position to indicate that progress has been achieved in the enactment of legislation to apply the Convention (Part I of the report form).**

2. *Inspection staff and material resources.* The Committee notes that, according to the Government, the labour inspection services comprise 15 inspectors distributed among three inspectorates and four offices. **It requests the Government to state whether it deems this number sufficient for the effective discharge of labour inspection duties in the light of the criteria set in Article 10 of the Convention.** The Committee also notes with interest that the Government plans to make use of funding from international cooperation to provide labour inspectors with the material resources and transport facilities they need to carry out their duties, as required by Article 11 of the Convention. **It asks the Government to describe any measures it takes in this respect with a view to ensuring, inter alia, that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions (Article 16).**

3. *Publication of an annual report.* The Committee recalls the importance it attaches to the publication, within a reasonable time, of an annual report by the central inspection authority, to be transmitted to the International Labour Office, in accordance with Article 20 of the Convention. It points out that section 469 of the Labour Code provides for such a report. **It hopes that the Government will soon be in a position to ensure that a labour inspection report is published covering the subjects listed in Article 21 of the Convention.**

## China

### **Hong Kong Special Administrative Region**

#### **Labour Inspection Convention, 1947 (No. 81) (notification: 1997)**

The Committee notes the Government's report for the period from 1 June 2004 to 31 May 2006.

1. *Development of the system and action of the labour inspectorate.* The Committee notes with interest the detailed information contained in the CD-ROMs on the activities of the Labour Department for the years 2003–04 and 2005, and particularly the measures taken in the various fields to improve the conditions of work in establishments, taking into

account new phenomena and risks and technological developments. It also notes with interest that a telephone line is now available 24 hours a day for employers and workers so that they can seek and receive technical information and advice on issues covered by the Convention (*Article 3, paragraph 1(a), of the Convention*), and to register complaints.

2. *Article 7. Reinforcement of training for labour inspectors.* The Committee also notes with interest that training programmes have been established to reinforce the professional competence, knowledge and skills of inspectors responsible for occupational safety and health. The training of Labour Department officials also includes participation in international conferences, detachment to overseas occupational safety and health authorities and seminars on specific themes, such as civil engineering, electrical engineering, mechanical engineering, chemical safety and plant and machinery operation, as well as information technology and legal issues.

3. *Article 3, paragraphs 1(a) and 2, and Article 17. Purpose of supervision by the labour inspectorate and other controls.* In its previous comments, the Committee requested the Government to provide detailed information on the manner in which it was ensured that the duty of controlling the illegal employment of workers, which is entrusted to labour inspectors, does not prejudice the performance of their primary duties, which are set out in *Article 3, paragraph 1*. The Government indicates in reply that labour inspectors conduct inspections of workplaces to secure the effective enforcement of legal provisions relating to conditions of work and the protection of workers. It specifies that, in conducting such inspections, through interviews with workers and the checking of wages and benefit records, labour inspectors also check the identity of workers on the basis of the records of employees to deter illegal employment. According to the Government, enforcement actions such as the arrest and detention of illegal workers suspected of breaches of the Immigration Ordinance are carried out by officers of other law enforcement authorities, such as the police and the Immigration Department.

The Committee further notes in the Annual Report of the Labour Department for 2005 (point 6.12 of the chapter on employees' rights and benefits) that labour inspectors carried out 133,014 workplace inspections, of which 131,399 were also conducted to combat illegal employment. 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. A telephone hotline has also been made available to the public to facilitate the provision of information on illegal employment activities.

The Committee notes that, according to the Government, the actions taken by labour inspectors under the Immigration Ordinance also serve to protect the employment opportunities of local workers so as to better protect the rights and benefits of these workers. However, according to the information contained in the Annual Report for 2005, while national workers who are employed illegally benefit from inspection activities with a view to regularizing their situation in relation to social benefits through the conviction of employers that are in breach of the rules, it would appear that no measures are envisaged in this respect in relation to foreign workers without the necessary residence authorization. Indeed, they are subject to arrest and imprisonment. The annual report contains illustrations of suspected illegal workers being arrested, sitting on the ground with their faces to the wall.

With regard to employers in breach of the Immigration Ordinance, the Government appears to indicate that they are subject to inquiries and prosecution by the police and the Immigration Department. In its General Survey of 2006 on labour inspection, the Committee emphasized that "neither Convention No. 81 nor Convention No. 129 contains any provision suggesting that any worker be excluded from the protection afforded by labour inspection on account of their irregular employment status". The Committee supported its views with a reference to the preparatory work for the Labour Inspection (Agriculture) Convention, 1969 (No. 129), observing that most of the member States that expressed views on the issue were of the opinion that, "given the traditionally informal nature of the employment relationship in agricultural enterprises in many countries, the existence of a wage relationship with the operator should be the determining factor in defining the workers covered" by labour inspection (General Survey, paragraph 77). It recommended that cooperation by labour inspection with 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 their working conditions" (paragraph 161).

The Committee cannot overemphasize the reasons for which the exercise by labour inspectors of duties related to the monitoring of the illegal immigration of workers can be a serious obstacle to the discharge of their duties of supervising conditions of work and the protection of workers. In paragraph 78 of the General Survey, it observed that since the human and other resources available to labour inspectorates are not unlimited, this would appear to entail a proportionate decrease in inspection of conditions of work in some countries. Efforts to control the employment of migrant workers in an irregular situation require the mobilization of considerable resources in terms of staff, time and material resources, which inspection services can provide only to the detriment of their primary duties. In the view of the Committee, "the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all workers if it is to be compatible with the objective of labour inspection. This objective can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and the protection of workers" (paragraph 78).

***The Committee hopes that the Government will take this guidance and these recommendations into account and that it will be in a position in its next report to indicate the measures adopted with a view to 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 (Article 17 of the Convention) and for the protection of the workers concerned (Articles 2 and 3).*

## Colombia

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129)** (ratification: 1976)

The Committee notes the Government's report for the period ending on 30 June 2007, the information sent in reply to its previous comments, and the General Report on Evaluation and Follow-Up Visits for the Reinforcement of Territorial Departments, Special Offices and Labour Inspection Services, also attached. The Committee also notes the comments of the Single Confederation of Workers of Colombia (CUT), received by the ILO on 31 August 2007 and forwarded to the Government on 18 September 2007. The CUT has objections to: (1) the conditions of service of labour inspectors; (2) human resources and the distribution of the labour inspection services; (3) the material means and the transport facilities available to labour inspectors; and (4) the frequency and quality of inspection visits. ***The Committee asks the Government to provide the Office with any comments that it feels may be useful on the issues raised by the CUT, supplemented if necessary by any relevant documents, so that they may be examined at its next session.***

*Article 17 of the Convention. Association of labour inspectors in preventive control in agricultural undertakings.* The Committee notes that labour inspectors are required to verify the existence, including in agricultural undertakings, of joint occupational health committees (COPASO) or monitors in smaller undertakings. The territorial labour departments, under the coordination of the General Directorate of Occupational Risks, are responsible for ensuring the application of the legislation on risk prevention. In consultation with the occupational health committees, they cooperate with the bodies responsible for health in occupational disease prevention activities. There are also occupational health committees at local level, to which the labour inspectors give advice on the preparation and implementation of activities and policies relating to risk prevention. The Committee also notes with interest that occupational risk insurance companies help to supervise the application of the relevant legislation by making it compulsory for undertakings to comply with that legislation and stop practices which are unlawful or a danger to the health or life of workers affiliated to the general system for employment injury. ***Noting also that the CUT has said it is unaware whether any measures have been taken to promote collaboration between inspection officials and employers and workers in the agricultural sector, the Committee asks the Government to specify whether such measures have been taken and whether and in what manner the association of the inspection services in preventive control in agricultural undertakings extends to the control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety.***

The Committee is addressing a direct request to the Government on a number of other matters.

## Comoros

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)**

The Committee notes the Government's brief report and its reiterated request for technical assistance from the Office, particularly for the training of labour inspectors. It notes the Government's undertaking to do its best to follow the recommendation made at the national workshop on international labour standards in July 2007 on the need to establish a specific budget line for labour inspection. ***The Committee strongly encourages the Government to take this step and invites it to take measures in the first place for the establishment of an assessment that is as precise as possible of the situation with regard to labour inspection in terms of the needs to be met: identification of the workplaces liable to inspection (number, activity, size, location) and the workers engaged therein (number, categories), as well as the legal provisions relating to conditions of work and the protection of workers to be enforced.*** These are essential criteria for evaluating the appropriate level of the staff and the material resources available and for the identification of priority fields of action, taking into account the national budget. ***The Committee hopes that the Government will be in a position in its next report to refer to decisive developments in this respect and to official approaches to the Office with a view to obtaining the required technical assistance and the necessary support in seeking funding through international cooperation.***

## Cyprus

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)**

The Committee notes the Government's report, which refers to the new legislative and regulatory texts in force, and also the 2004 annual report on the work of the labour inspectorate, published by the Department of Labour Inspection.

*Articles 20 and 21 of the Convention. Publication, transmission and content of the annual report on the work of the inspection services.* The Committee notes with interest the publication of an annual report containing detailed information on the laws and regulations for the enforcement of which labour inspectors and officials are responsible, the composition

of the staff of the labour inspectorate, the number of workplaces liable to inspection and the number of workers employed therein, and also the statistics of inspection visits (broken down by economic sector), violations reported to the legal services (classified according to the applicable legal provisions), penalties imposed (amount of fines), and industrial accidents (by economic sector, sex and cause). It also notes with interest the establishment and operation since 2000 of the computerized Factory Inspectorate System (FIS) enabling the collection and processing of these statistics by the Department of Labour Inspection and facilitating in particular the drawing up of an annual strategic plan at national and provincial levels and the planning of inspection visits in line with set objectives.

The Committee is raising another matter in a direct request to the Government.

## Democratic Republic of the Congo

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1968)***

The Committee notes the Government's report for the period ending 31 May 2006.

1. *Articles 1, 2, 4, 5, 6, 7, 9, 10, 11, 19 and 20 of the Convention. Organization, functioning and budget of the labour inspection system.* The Committee notes the new Constitution, which was adopted in May 2005 and entered into force on 18 February 2006, under which the national public service, the public finances of the Republic and labour legislation come under the exclusive competence of the central authority (section 202(8), (9) and (36)(e)), whereas the provincial and local public service and provincial public finances come under the competence of the provinces (section 204(3) and (5)). Referring to its comments made in 2000 and 2002 concerning the undertakings made by the Government to strengthen the resources of the labour inspectorate, and despite being fully aware of the severe and persistent budgetary constraints which the Government faces because of the economic situation, the Committee is nevertheless bound to underline the importance of the socio-economic role played by the labour inspectorate and to stress once again the need to provide labour inspectors with a status and conditions of service which take due account of the importance and the specific nature of their duties, in particular providing remuneration linked to personal merit. ***The Committee would be grateful if the Government would indicate the distribution of powers between the central authority and the provincial authorities with regard to the organization and functioning of labour inspection structures, the appointment of labour inspection staff and also budgetary decisions concerning the resources which are necessary for this function of the public administration.***

While noting the Government's reply to some of the issues raised by the Confederation of Trade Unions of Congo (CSC) in its observation, which was supported by a statement from the World Confederation of Labour (WCL, now International Trade Union Confederation – ITUC) and sent by the ILO on 16 July 2004, and likewise raised in a second CSC observation sent to the Government on 11 October 2005, the Committee draws its attention to the following points.

2. *Article 3, paragraph 2, and Articles 6 and 15(a). Probity, independence and impartiality of labour inspectors.* The observations sent by the CSC in 2004 and 2005 suggest that the highly precarious conditions of work of labour inspectors results in their tending to favour employers by allowing them to dismiss workers following individual and collective disputes in exchange for financial inducements. In addition, labour inspectors tend also to have parallel duties as heads of personnel in certain enterprises. In the CSC's view, the profession of labour inspector is tainted with a reputation for corruption. Furthermore, the lack of transport facilities is an additional obstacle to the inspectors' performance of their investigation duties. The Government, on the other hand, considers that, even though the conditions for performing labour inspection duties are indeed difficult, the inspectors do their best to ensure observance of the law with regard to the settlement of collective labour disputes, in accordance with sections 62, 298 and 304 of the Labour Code relating to termination of the employment contract at the employer's initiative and Order No. 12/CAB/MIN/TPS/2005 of 26 October 2005, replacing Order No. 025/95 of 31 March 1995, concerning procedures for the dismissal of workers on the grounds of the operational needs of the enterprise, workplace or service. However, the Government makes no comment with regard to the performance by certain inspectors of a parallel profession or the lack of transport facilities referred to by the CSC. The Committee notes that the Government, contrary to what it states once again in its report, has not sent the Order of 5 May 1997, requested several times by the Committee, lifting the ban on inspection visits imposed by the Order of 25 August 1994.

As the Committee has underlined in its General Survey of 2006 on labour inspection, when inspectors do not receive remuneration commensurate with their responsibilities, the labour inspection itself is devalued. In carrying out their duties, inspectors may then find themselves treated with disrespect, which detracts from their authority. Their low standard of living can also expose inspection officials to the temptation of treating certain employers leniently in exchange for favours (paragraph 214). Combining jobs, even when there is a prohibition on intervening as an inspector in any matter having a direct or indirect link with their private activity, is, in the Committee's view, an obstacle to the performance of inspection duties. ***The Committee therefore asks the Government to take measures to ensure that labour inspectors have a status and conditions of service which correspond to the importance of their responsibilities, shielding them from any improper external influence, in particular such influence as might result from being in a subordinate position because of parallel employment.***

***Also recalling that, in accordance with the guidance given by Recommendation No. 81, labour inspectors' duties should not include acting as conciliator or arbitrator in labour disputes, and drawing the Government's attention in***

*this respect to paragraphs 72 and 74 of its General Survey of 2006 on labour inspection, the Committee asks it to take measures to ensure that inspectors are not entrusted with any such task or with any other task that might interfere with the effective discharge of their primary duties defined by Article 3, paragraph 1, of the Convention or that might prejudice in any way the authority and impartiality which are necessary in their relations with employers and workers. The Committee hopes that the inspection services will thus devote most of their human and material resources to the duties of supervision, information and technical advice to employers and workers, and to improving the legislation on conditions of work and the protection of workers while engaged in their work.*

3. *Articles 22 and 23, paragraph 2, of the ILO Constitution. Obligation to report to the ILO and obligation to communicate to professional organizations government reports submitted to the ILO.* In its first observation, the CSC indicated that the Government was not communicating to workers' organizations its reports on the measures taken to apply the Convention. The Committee notes that the Government does not reply to this allegation, but states that it sent its last report to four employers' organizations and 12 workers' organizations. In its previous report covering the period from 1 September 1997 to 31 May 2000 which was received by the ILO on 8 June 2001, the Government stated that it had sent that report to three employers' organizations and six workers' organizations. *The Committee asks the Government to take measures to ensure that its reports to the ILO on the application of the present Convention are communicated in good time in future to professional organizations so that they are able to react with the necessary promptness. It also reiterates that the Government is bound, as stated in the Convention report form, not only to supply information on any new legislative measures concerning the application of the Convention and send a copy of the report to employers' and workers' organizations, but also to provide information in reply to questions in the report form on the practical application of the Convention and on any observations from such organizations, as well as in reply to any comment from the ILO supervisory bodies regarding the application of the Convention.*

4. *Articles 20 and 21. Annual report on the work of the labour inspection services.* The Committee notes that no information has been provided for many years on the implementation of measures to give full effect to these provisions of the Convention, with the result that it has no practical or illustrative information on the functioning of the labour inspection system with which to fulfil its supervisory duty. *It would be grateful if the Government would adopt such measures rapidly, inform the ILO and also send all available information and statistics on the matters covered by Article 21.*

The Committee is also sending a direct request to the Government on another point.

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1987)**

*Re-establishment of the exercise of the right to organize.* The Committee notes with satisfaction 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 addressing a request on other matters directly to the Government.

## **Dominican Republic**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)**

The Committee notes the Government's report for the period ending in September 2006 and the documents attached thereto.

1. *Article 6 of the Convention. Improvement of the conditions of service of labour inspectors.* The Committee notes with interest that the wages of inspection staff have been increased (65 per cent for inspectors and 80 per cent for the directors of regional inspection offices).

2. *Article 11(b). Increase in transport facilities for labour inspectors.* The Committee notes with interest that four new vehicles have been made available to inspectors for duty travel. *It would be grateful if the Government would inform the Office of the impact of this important measure on inspection activities and their results.*

3. *Article 12, paragraph 1(a) and (b). Right of labour inspectors to enter any workplace freely.* The Committee notes with interest that, in response to its previous comments, it is planned to amend the national legislation so that, as provided by the Convention, inspectors will be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection and to enter by day any premises which they may have reasonable cause to believe to be liable to inspection. *The Government is requested to provide information on any progress made in the amendment process envisaged to this effect or to communicate a copy of any text adopted.*

4. *Article 12, paragraph 1(c)(iv). Testing of substances and materials used or handled.* The Committee notes with interest that the Department of Industrial Safety has benefited from ILO technical cooperation to improve health and safety conditions for workers in the workplace. *Further to its previous comments concerning the usefulness of giving a legal basis to the prerogatives of labour inspectors, the Committee hopes that measures will be taken to give effect to this provision of the Convention under which labour inspectors must be empowered to take or remove for purposes of*

*analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose. It asks the Government to keep the ILO informed of any progress made in this respect and to communicate a copy of the new occupational health and safety regulations which were due to be adopted in 2006.*

5. *Article 14. Notifying the labour inspectorate of industrial accidents and cases of occupational disease. The Committee once again asks the Government to take measures to determine the cases in which the labour inspectorate must be informed of industrial accidents and cases of occupational disease and to keep the Office informed in this respect. It would be grateful if the Government would also indicate progress in the drafting of a schedule determining and classifying occupational diseases.*

6. *Article 18. Effective enforcement of adequate penalties.* The Committee notes the penalties provided for in sections 720 and 721 of the Labour Code for violations of labour legislation. It also notes the Government's intention to consult the social partners within the framework of the Labour Advisory Council with a view to establishing financial penalties for obstructing labour inspectors in the performance of their duties. *Further to its previous comments, the Committee once again asks the Government to ensure that a method is devised to review the amount of the fines imposed so that they maintain their dissuasive purpose despite any monetary fluctuations and that these penalties are effectively enforced. It hopes that the Government will soon be able to provide information on measures taken to this effect.*

7. *Articles 20 and 21. Annual inspection report.* The Committee once again notes that, despite repeated requests, no annual inspection report of the kind provided for by the Convention has been received by the Office. *The Committee recalls that the Government may request the technical assistance of the Office to create the necessary conditions to enable the central inspection authority to publish and communicate to the Office a report on the work of the inspection services under its control. The Committee strongly encourages the Government to take the necessary steps to this effect and to provide information on any progress made in this regard.*

The Committee is addressing a direct request to the Government concerning a number of other points.

## Finland

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1950)***

The Committee notes the Government's report for the period ending 31 May 2006, which contains information in reply to its previous comments, and to the issues raised by the Central Organization of Finnish Trade Unions (SAK) and the Confederation of Unions for Academic Professionals in Finland (AKAVA), and also information on the practical functioning of the labour inspection system. It also notes the new observations made by the SAK and AKAVA which are incorporated in the Government's report.

1. *Legislative developments.* The Committee notes the adoption and the content of Act No. 44/2006 on the Supervision of Occupational Safety and Health which came into force on 1 February 2006, repealing Act No. 131 of 16 February 1973, and also of Act No. 701 of 11 August 2006 on Occupational Safety and Health (shared work places), supplementing Act No. 738/2002 on Occupational Safety and Health and Act No. 44/2006, which contain provisions on cooperation between different employers in shared workplaces and their responsibilities. The Committee notes with interest that these new laws clarify and reinforce the powers of the labour inspection authorities and the procedures for collaboration between employers and workers to ensure the application of all provisions relating directly or indirectly to ensuring health and safety at work.

2. *Article 8 of the Convention. Proportion of women inspectors.* The Committee notes with interest that fresh recruitment within the occupational safety and health administration increased the proportion of women inspectors from 29 per cent in 2004 to 42.1 per cent in 2005, to the satisfaction of the SAK, which wished to have an inspectorate which was representative of the various components of the workforce in the different sectors of the economy. *The Committee would be grateful if the Government would indicate whether women inspectors perform specific tasks connected with the presence of women in the workforce in workplaces liable to inspection.*

3. *Articles 10 and 16. Matching the number of labour inspectors to the scope and complexity of their duties.* According to the Government, the SAK and AKAVA are concerned at the stagnation in the numbers of inspectors, given the growing complexity of inspection duties and the increasing number of areas to be inspected. The abovementioned organizations estimate that the coverage of the inspectorate in certain sectors of activity has decreased to 10 per cent. The Committee notes the Government's statement that the amalgamation of occupational health and safety districts has been conducted satisfactorily and that the new units are fully operational. While considering that the new inspection tasks are more complex, since they involve an evaluation of both legal and sociological aspects, the Government nevertheless indicates that the number of inspections increased slightly in 2005 after decreasing for several years and that the controls currently aim more specifically at evaluating occupational risks and the appropriate measures for applying health and safety legislation. *The Committee hopes that with its next report the Government will send a copy, if possible in English, of Decree No. 1035 of 2003 on combining occupational health and safety districts and that it will also be able*

*to supply information on 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.*

4. *Article 9. Collaboration of duly qualified experts and technicians.* The Government refers in its report to the doubts expressed by the SAK and AKAVA regarding psychologists or doctors within the occupational safety and health administration. As regards the collaboration of experts in general within the occupational safety and health administration, the Committee notes the Government's statement that there is at least one employee in each district possessing sufficient expertise and basic training in chemical substances. While indicating that it is not in a position to give information on the regional distribution of psychologists in service, it states that the occupational safety and health districts are autonomous entities which are entitled to make use of external experts or recruit them, as needed. ***The Committee would be grateful if the Government would supply further information on the scope of the powers of the occupational safety and health authority regarding the recruitment of duly qualified experts and technicians, on the status and powers of the persons recruited, on procedures for making use of external experts, and on the resources at the authority's disposal to ensure that the experts uphold the principle of professional secrecy and confidentiality, imposed on labour inspectors by Article 15(b) and (c), with respect to sources of complaints.***

5. *Articles 14 and 21(f) and (g). Reporting of cases of occupational disease.* The Committee notes with interest that, according to the SAK and AKAVA, the difficulties connected with establishing statistics on cases of occupational disease have been resolved since 2004. However, the abovementioned organizations consider that the identification of symptoms remains problematic, that there are substantial regional differences in this respect and that investigations arising from the cases of disease are rare and unreliable. The detailed information supplied by the Government on the mechanism for reporting and recording cases of occupational disease demonstrate a significant development in the relevant procedures but provide no answer to the concern expressed by the trade unions regarding diagnosing difficulties and regional differences in this area. ***The Committee would be grateful if the Government would indicate the measures taken to resolve these difficulties, as provided for particularly by Article 4(b) of the Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (No. 155), via collaboration with insurance institutions, medical practitioners and other bodies directly concerned.***

6. *Articles 20 and 21. Annual report on the work of the occupational safety and health services.* In its previous report, the Government indicated that the occupational safety and health services draw up annual activity reports. However, no annual report of a general nature on inspection activities has been received at the ILO since the report covering 2000. The SAK stated in 2004 that it had no knowledge of the report required by *Articles 20 and 21* even being published. The same comment has been repeated by the SAK and AKAVA. ***While noting with interest the follow-up report on occupational safety and health strategy published by the Ministry of Social Affairs and Health in 2004, which provides useful information on the functioning of the labour inspection system over a number of years, the Committee would be grateful if the Government would ensure that an annual report on the matters covered by Article 21 is once again published and sent to the Office according to the procedure and deadlines laid down by Article 20.***

## France

### French Guiana

#### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129)***

The Committee takes note of the information supplied by the Government in its reports for 2005 and 2006.

1. *Articles 6, 14 and 21 of the Convention. Duties, staff, work of the labour inspection services in agriculture.* The Committee notes that, according to the information sent by the Government in 2005, the staff of the two sections of the labour inspectorate responsible for all economic sectors in Guiana, including agriculture, consisted of two inspectors and five controllers in 2003, and two inspectors and four controllers in 2004 and 2005. In 2006, each section had only two controllers, which does not appear to be in line with the previously announced strengthening of the inspectorate to improve its efficiency. The Government further indicates that, in view of the vast areas to be covered, it would be a good idea to envisage establishing, as from 2007, a new section of the labour inspectorate which might specialize in agriculture and which would have one inspector and three controllers. ***The Committee requests the Government to provide information in its next report on all developments in this area.***

The Committee points out that the number of labour inspectors in agriculture must be sufficient to secure the effective discharge of the duties of the inspectorate, in other words, not only enforcement of the legislation on conditions of work and the protection of workers by on-the-spot visits, but also providing employers and workers in agricultural undertakings with information on the applicable provisions and technical advice, in particular with a view to implementing a policy for the prevention of occupational accidents and diseases, especially where phytosanitary products are used in farming. According to the Government, the supervision programme for 2005 focused in particular on identifying illicit labour. In view of the small size of the inspectorate and the material difficulties encountered by inspectors, the Committee draws the Government's attention to the fact that any focus on duties other than those set forth in *Article 6, paragraphs 1 and 2*, should not interfere with the effective discharge of inspectors' primary duties or

prejudice in any way the authority and impartiality which inspectors need in their relations with employers and workers (*Article 6, paragraph 3*). **It accordingly asks the Government to take all suitable measures to ensure that the primary duties of labour inspectors and controllers in agricultural undertakings focus on supervising the working and living conditions of agricultural workers and on information and technical advice for employers and workers with a view to better application of the relevant legislation.**

2. *Articles 12, 26 and 27. Annual report on the work of the inspection services in agriculture.* The Committee notes from the figures sent in 2005 by the Government that 14 inspections were carried out in the agricultural sector in Guiana in 2004 by the two sections of the inspectorate. It points out that in order to determine the number of inspectors and controllers needed (*Article 14*) and ensure that agricultural undertakings are inspected as often and as thoroughly as necessary (*Article 21*), there must be reliable data on the number and nature of the undertakings and the number and categories of persons employed therein. According to information published on the Internet by the Chamber of Industry and Commerce (Key figures 2005 – Guiana, 2006 edition), there are 5,300 agricultural undertakings and an agricultural population of 20,000. In the report sent in 2006, the Government indicates that, despite several requests, it has still not obtained the list of agricultural undertakings from the Chamber of Agriculture. **The Committee requests the Government to ensure that, in accordance with Article 12 of the Convention, appropriate steps are taken to promote effective cooperation between the inspection services in agriculture and government services and public institutions so that the labour inspectorate has access to all the data necessary to rational and pertinent use of its resources and assessment of its needs. The Government is likewise asked to take measures to ensure that the central inspection authority receives data on offences committed and sanctions imposed (specifying the relevant laws and regulations), occupational accidents and diseases (specifying their causes), so that an annual report on the work on the labour inspectorate in agriculture as required by the Convention is published and sent to the ILO within the prescribed time limits, either as a separate report or as a part of the general annual report.**

*While aware of the difficulties encountered by labour inspectors and controllers in carrying out inspections in agricultural undertakings (location of undertakings, difficult access, size of territory, lack of infrastructure, unfilled posts, etc.), the Committee notes with regret that little progress has been made in the last few years as regards labour inspection in agriculture. It trusts that the Government will take appropriate measures in the very near future to provide the means necessary to operate an efficient inspection system and to give effect to the provisions of the Convention in Guiana.*

The Committee is addressing a request on other matters directly to the Government.

## New Caledonia

### **Labour Inspection Convention, 1947 (No. 81)**

The Committee notes the Government's report for the period ending September 2006 and the documents attached thereto.

1. *Articles 1, 3, 4, 10, 11 and 16 of the Convention. Organization, operation and coverage of the labour inspection system.* The Committee notes Order No. 2005-2591/GNC of 13 October 2005 establishing the responsibilities and organization of the Labour and Employment Directorate of New Caledonia. It notes with satisfaction the creation, pursuant to this Order, of a "labour dispute settlement and collective bargaining" division, which means that the activities of the labour inspectorate can now focus on its two main missions, namely the monitoring of compliance with labour legislation and the prevention of occupational risks, under the supervision of an assistant director from the team of labour inspectors. The Committee also notes with interest that the number of inspection officials, which increased in 2006, will be reinforced once again by two new inspectors and a medical inspector. **The Committee asks the Government to continue providing information on the reinforcement of the number of inspection officials (inspectors and controllers), the creation of a division which, according to the report, is to be set up in the north of New Caledonia, the transport facilities made available to inspectors and the overall functioning of the inspection system.**

2. *Article 3, paragraph 1(b), Article 5(b), and Part II of the Labour Inspection Recommendation, 1947 (No. 81). Collaboration of the social partners with regard to occupational safety and health.* The Committee notes with interest that the labour inspection service has drawn up a health and safety plan for 2006–08, in consultation with the social partners, the purpose of which is to promote health and safety in the workplace and prevent occupational hazards. **It asks the Government to provide in its next report information on the implementation of this plan (consultations between the various actors involved in hazard prevention, development of legal standards, prevention campaigns and training activities).**

3. *Articles 20 and 21. Annual report on the work of the labour inspectorate.* In reply to the Committee's previous comments, the Government states that the information on inspection activities has not yet been consolidated, but that it hopes that the reinforcement of the number of inspection staff will allow this to be achieved. Nevertheless, the Committee notes with interest that the Government has been able to communicate, with its report, a table summarizing the activities carried out by the inspection service in 2005. **It hopes that the Government will soon be able to develop a system for collecting information which will allow for the publication and communication to the Office, within the time frame**

specified in Article 20, of an annual report on labour inspection activities containing the information required on the subjects listed in Article 21, paragraphs (a) to (g).

*The Committee would be grateful if the Government would also communicate the results of the inventory of construction enterprises and temporary employment enterprises which was to be drawn up in 2006, within the framework of the annual programme on the basis of which the sections of the inspection service perform their activities.*

4. *Draft consolidation of labour laws (Labour Code) and draft country law. The Committee asks the Government to indicate whether, as stated in its report communicated in 2006, the draft consolidation of the labour legislation applicable in New Caledonia and the draft country law allowing inspection officials to order the stoppage of work on a construction site have been adopted and, if so, to provide the Office with copies.*

## Gabon

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)

Further to its previous observation, the Committee notes the report for the period ending 1 September 2006, in which the Government refers to Decree No. 000741 of 22 September 2005, which was adopted pursuant to the provisions of section 215 of the Labour Code and establishes the penalties for offences in the fields of labour, occupational safety and health and social security. It also notes the Government's report for the period ending 1 September 2007, which contains detailed information on the organization of the labour inspection system and the legislative provisions giving effect to the Convention. While noting this information with interest, the Committee also notes the absence of information on how the labour inspection services function in practice and on the results they obtain. It would be grateful if the Government would provide further information on the following points.

1. *Articles 7 and 10 of the Convention. Training for labour inspectors during employment. Number of inspectors.* The Government states that further training is organized for labour inspectors currently in service so as to ensure that their skills are updated in accordance with developments in the world of work. Such training is mainly organized within the African Regional Centre for Labour Administration (CRADAT). *The Committee notes with interest that at the time when the Government sent its report, a number of inspectors were receiving training at the CRADAT, and asks the Government to provide information on the further training provided during the period covered by its next report and to indicate the duration of this training and the number of inspectors who have benefited from it. The Government is also requested to indicate the number of labour inspectors in service, their geographical distribution, retirement forecasts and plans for the filling of vacant posts.*

2. *Article 11. Conditions of work and transport facilities for labour inspectors.* According to the Government, the conditions of work of inspectors are improving slowly due to the unfavourable economic climate. Administration officials have been on strike for months. The Government has listened carefully to the problems highlighted by these officials. Certain inspection services have been provided with transport within the framework of the 2006 budget and certain offices have undergone renovation work. The Government states that there is still much to do, but that these efforts will continue over the coming years. The Committee notes that, although the inadequacy of the material means (notably transport) available to the labour inspectorate makes it difficult to apply the Convention, the Government intends to do its utmost to attenuate these difficulties. *The Committee asks the Government to provide detailed information on the geographical location of the renovated offices, the improvements carried out, the geographical distribution of the vehicles made available to labour inspectors and other transport facilities which they can use for the performance of their duties, and the amounts and arrangements in respect of the reimbursement of their travel expenses, if any. The Government is also requested to describe the office equipment available to inspectors (telephones, typewriters, photocopiers, computers, measuring apparatus, etc.) and the consumables used (fuel, registers, paper, etc.), and the arrangements for replacing such items, and to indicate any measures taken or envisaged with a view to ensuring the progressive improvement of the application of the Convention in practice.*

3. *Article 13. Exercise of powers of injunction of labour inspectors in respect of occupational health and safety.* *The Committee asks the Government to provide concrete examples, with supporting documentation, of cases in which a formal notice has been issued to the employer following the reporting of a risk or a danger to the safety or health of workers and where such formal notices have led to further action, or where the matter has been referred to the courts. It would be grateful if the Government would indicate the proportion of cases referred to the courts which have given rise to a court decision (conviction or discharge) and to provide copies of the decisions or extracts from such decisions indicating the legal grounds for the judgment.*

4. *Article 18. 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.*

5. *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.*

6. *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.*

7. *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.*

## Germany

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)**

The Committee notes the Government's report for the period ending 31 May 2006 and the information in reply to its previous comments, particularly those regarding the comments from the Union of Technical Officials, Employees and Labourers (BTB) in 2004 concerning the reductions in controls of occupational safety and health matters supposedly resulting from the reform of the labour inspectorate in the Land of Baden-Württemberg. The Committee notes a new observation from this organization dated 23 October 2006 referring to the abovementioned points, which the ILO forwarded to the Government on 28 February 2007.

*Restructuring of the labour inspection system.* In its previous comments, the Committee noted the Government's view that the legislative amendments affecting the labour inspection system in the Land of Baden-Württemberg and consisting of the division of responsibilities between the authorities at different levels did not call into question guarantees relating to supervision and control of the labour inspection system as provided for by law, the Ministry of Home Affairs of the Land assuming the duties of the central authority in this matter.

The Committee considered that, even though the incorporation of the labour inspection system into the joint administrative structures of the Land did not in itself conflict with the provisions of the Convention, the Government should nevertheless supply information in reply to the concern voiced by the BTB regarding the imbalanced distribution of the workforce of the former labour inspection system to the detriment of certain subregional districts, which was likely to obstruct the application of *Article 16 of the Convention*.

In its report received by the ILO in 2006, the Government stated that the new Administrative Reform Act came into force on 1 January 2005 and that labour inspection as defined by the Convention was amalgamated in the Land of Baden-Württemberg with control of the environment. This integrated approach reflects the principle of a single point of contact with regard to all aspects of occupational safety and health and environmental protection. In the Government's view, this restructuring would have no impact on the fundamental principles of the Convention. It asserts that there has been a balanced distribution of inspection staff between the regional authorities, on the one hand, and the subregional authorities, on the other, given that it meets the requirements of each territorial entity. The guiding principle of the administrative reforms which have been implemented is to assign responsibility to the regional authorities for technical inspection activities relating to establishments which are likely to have a significant impact on the environment. These authorities are therefore responsible for the certification and inspection of enterprises which are covered by the provisions of Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC) or which perform activities governed by the provisions of the Incident Ordinance (*Störfallverordnung*). Another guiding principle of the reform is to reinforce coordination of the regional and subregional authorities for the performance of public works. Responsibilities in this case no longer depend on the type of enterprise but on the "industrial site" concept as defined under section 162(2) of the new Act, namely a specific area defined according to the surface area occupied by enterprises, installations or zones of

operation with a spatial, technical or functional interconnection and placed under the supervision of a natural or legal person.

The Government points out that only the regional authorities carry out inspections in relation to the safety of products, including safety items and medicinal products, and in relation to protection against radiation, maternity protection and the protection of homeworkers, this point not having been reflected by the BTB even though it partially explains the new distribution of the inspection staff. The Government also points out that the regional authorities are assigned duties other than those related to factories and installations. These are technical, coordination and advisory tasks vis-à-vis the public authorities at a lower level, including the subregional authorities.

According to the Government, none of the ministers responsible for occupational safety and health issues is aware of any grounds for justifying an in-depth re-examination of the new distribution of staff. It emphasizes that the balance of the staff distribution has to be understood not only according to the number of workplaces to be inspected but also taking account of the complexity of certification procedures and their environmental impact, as purely numerical criteria are insufficient. In this respect, the Government refers to *Article 10* of the Convention and emphasizes that the nature and size of workplaces, on the one hand, and the number and complexity of the legal provisions, on the other hand, can differ significantly between a regional authority and a subregional authority. Although it is true that the competence of subregional authorities extends to a wide range of categories of establishments and activities (retailers, hotels, restaurants, shops, offices and other administrative buildings), the number of industrial installations and the level of risk in them is low by comparison with high-risk workplaces which, according to the Government, generated most of the activities of the public factory inspection service before the reform. The latter also took action in enterprises having a certain environmental importance which also depended on the regional authorities for certification and plant authorization. The Government considered this situation to demonstrate a natural compatibility between the role of the inspection services and that of the regional authorities, even before implementation of the reform. It also considers that institutional reform is a source of synergy. Hence, the Ministry of the Environment and the Ministry of Social Affairs of Baden-Württemberg attach the same importance to the promotion of training and retraining in the area of occupational safety and health.

In its observation sent on 23 October 2006, the BTB repeated its point, in addition to the points raised previously which had given rise to the situation referred to above, that the inspection services and the state supervisory services should remain grouped together in the same structure and underlined the negative impact that the same reforms implemented in other Länder had had on occupational safety and health. The main points of its argument were as follows:

- The existence of dual structures carries the risk of different approaches to implementation and makes coordination between the different Länder difficult.
- The fragmentation of inspection tasks between different departments, municipalities and urban districts reduces the impact of state control, the latter being limited to the monitoring of legality.
- Since responsibility for the recruitment of inspection staff is not clearly defined, the result for several years has been a lack of recruitment of new staff and, consequently, a loss of considerable expertise.
- The dispersion of authorities responsible for training among different structures is a source of inequality in the handling of the matters concerned.
- The diversity of computing systems used by the different structures is a source of difficulties in communication and information.
- Competencies for occupational safety and health are divided among an excessive number of regional subdivisions within each Land government.

According to the union, these aspects are already highlighted in an evaluation report produced in 2006 by the Senior Labour Inspectors Committee. The union claims that occupational safety and health inspection in Germany is no longer in conformity with the principles of the Convention.

While noting that the Government has not communicated its point of view with regard to the additional information and the supporting documentation sent by the BTB, the Committee notes that the Government states that, under the terms of section 179 of the Administrative Reform Act, a report from the urban and rural subregional authorities to the Ministry of Home Affairs on the implementation of the reform was expected by 30 June 2007. ***The Committee hopes that the Government will supply detailed information on the outcome of the examination of the two abovementioned reports, to enable it to make a fuller assessment, in relation to the relevant provisions of the Convention, of the impact of every aspect of the structural reforms relating to the labour inspectorate.***

## Guatemala

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)***

The Committee takes note of the Government's detailed report for the period ending on 1 September 2006 containing information in reply to observations of October 2002 and August 2004 by the Trade Union Confederation of Guatemala (UNSI TRAGUA), accompanied by abundant documentation. It also takes note of the new comments by

UNSI TRAGUA received at the Office on 21 November 2005, and of comments made on 7 September 2005 by the World Confederation of Labour (WCL, now International Trade Union Confederation – ITUC).

The observations by UNSI TRAGUA again address the impact of labour inspectors' conditions of service (inadequate pay, limited career prospects) and conditions of work (insufficient transport facilities and office equipment) on their tendency to depart from the ethical principles that should govern the performance of their duties. In carrying out visits, inspectors are inclined to show some indulgence towards persons, generally employers, who provide them with the transport facilities they need for travel. UNSI TRAGUA further asserts that the inspectors are victims of influence peddling which diverts them from the purposes of their work. It cites instances of former labour inspectors transferring to the private sector and using their ties with former colleagues still in service to obtain favours from them for the enterprises for which they work. Their unstable economic position leads some inspectors to maintain personal relations with employers and accept gifts from them in exchange for information about the date of a forthcoming inspection visit, or assurances of impunity. Procedures for complaints of wrongful dismissal are slow and marked by a blatant lack of resolve, as inspectors more often than not encourage the workers concerned to accept the arrangements proposed by the employer, with no regard for equity, or else forego their rights. Labour inspectors appear to treat their profession as a mere temporary occupation pending more lucrative employment in the private sector.

The abovementioned organization is also of the view that the lack of training for inspectors in subjects pertaining to international labour Conventions, and their lack of experience in enforcing the legislation, account for the fact that they are unable to identify abuses that are not covered by the legislation and bring them to the attention of the competent authorities, as required by *Article 3, paragraph 1(c), of the Convention*.

Lastly, UNSI TRAGUA asserts that some labour inspectors who have been reported for interfering in trade union matters remain unpunished.

1. *Articles 6 and 15(a). Need to improve the conditions of service of labour inspectors in order to secure observance of the ethical principles of the profession.* According to the Government, the national Constitution establishes that public employees and officials serve the State and not any political party. In comparison to the pay scales of other workers with a similar level of training and responsibility, the remuneration of inspectors is within the average. After considerable efforts to improve matters, an increase of 300 quetzales a month was to apply from July 2006. The Government supplements the above information with texts on the composition of the remuneration and allowances of labour inspectors and other categories of public servants. The Government nevertheless considers that inspectors cannot be accused of seeking better pay conditions in the private sector.

As to the allegation that inspectors lack probity in the performance of their duties, the Government states that the reports drawn up by inspectors can be communicated to those concerned in accordance with the procedure established in the Code of Civil and Commercial Procedure, but that the reports are fully valid until shown to be false or biased. An inspector found guilty of false or biased reporting is subject to penal or civil sanctions, or even dismissal, pursuant to statutory procedures.

With regard to the allegation of interference in trade union affairs, the Government states that the case went to trial and the inspector was acquitted on the grounds that he had acted within the law. This can also be seen from internal correspondence between the Ministry's Human Resources Director and the Subdirector of International Relations.

***While taking due note of this information, the Committee again asks the Government to ensure that the legislation is supplemented by provisions that expressly forbid inspectors to have any interest whatsoever, whether direct or indirect, in the workplaces under their supervision, including any form of social or material advantage the inspector might draw himself or indirectly through a third party. It would be grateful if the Government would provide information on all progress made in this respect and to send copies of any documents attesting to the application, in practice, of the procedure dismissing a labour inspector on grounds of conduct that is contrary to the provisions of Article 15(a) of the Convention.***

***Referring to paragraphs 209 to 216 of its General Survey of 2006 on labour inspection, the Committee points out to the Government that in order to attract and retain qualified inspection staff, it is necessary to provide them with a level of remuneration and career prospects that are commensurate with the importance and complexity of their duties, and to ensure that they are independent of improper external influences.***

***Further to its previous comments, the Committee trusts that the Government will not fail to provide a copy of the text mentioned in the report received in 2004, concerning the mechanism to compensate labour inspectors for overtime.***

2. *Articles 11 and 16. Need to improve the working conditions of inspectors so that they can supervise application of the legislation effectively, inter alia, by frequent inspection of workplaces.* In response to UNSI TRAGUA's allegations, the Government states that despite a chaotic economic situation, the labour inspectorate carried out its functions through offices located in the 22 departments of the country, in accordance with the provisions of the regulations on the administrative decentralization of the Ministry of Labour and Social Security (Agreement No. 182-2000). The Government states that the Ministry having moved, inspectors working in the capital are now housed in spacious new offices with modern computer equipment. As for transport facilities, the Government indicates that the departmental offices and the central headquarters of the inspectorate have a fleet of some 20 vehicles to cover the most urgent needs. The Committee also takes note of Governmental Agreement No. 397-98 (settlement of travel allowances for personnel

carrying out functions within the Executive and the decentralized and autonomous bodies of the Executive State), sent by the Government, allowing labour inspectors either an advance or a payment to cover their accommodation, food, transport and other related costs in the event of duty travel outside their ordinary place of work. The Committee notes with interest that for travel within the capital, Agreement No. 17<sup>“A”</sup>-2006 of 1 February 2006 of the Ministry of Labour and Social Security grants, in Guatemala City, an indemnity of 10 quetzales *intramuros* and, according to the Government, 28 quetzales for travel *extramuros*. It also notes with interest the documents showing settlement of the arrears of travel allowances.

The Committee nonetheless notes that, according to the statistical data for the period 2003–05, inspection visits were carried out for the most part as a result of complaints, as the work of the labour inspection services continues to focus mainly on procedures for the settlement of labour disputes. ***The Committee requests the Government to take all necessary steps to get the public authorities to accord the labour inspectorate priority commensurate with its social and economic purposes so that the resources allocated to it in forthcoming budgetary decisions by the State are sufficient to secure the staff and material resources necessary to its operation, in accordance with Article 3, paragraph 1, and Article 16. The Government is asked to provide information on any measures taken to this end and on the results obtained.***

3. *Article 7 and Article 3, paragraph 1(c). Training for inspectors enabling them to contribute to improving the legislation.* In response to UNSITRAGUA’s objection that inspectors are insufficiently trained and lack the ability to identify voids in the legislation that need to be filled, the Government states that applicants for labour inspection posts must have completed four of the six years of study required to practice as a lawyer or a notary. In the Government’s view, this requirement ensures that the applicant has the necessary qualifications to become a labour inspector, including knowledge of international labour law. The Committee takes due note of this information. ***It nonetheless asks the Government to take steps to ensure, in accordance with Article 7, paragraph 3, that when they are recruited, labour inspectors receive adequate training for the performance of their duties, including training to enable them to identify gaps in the legislation and bring them to the notice of the competent authority. It hopes that the Government will not fail to provide information on progress made in this respect.***

4. *Articles 13, 17 and 18. Inspectors’ role in the punishment of offences.* The WCL refers to discussions in a tripartite committee in 2005 in which the workers’ representatives pointed out the advisability of empowering labour inspectors to impose administrative sanctions, since the judicial authority intervenes only in the event of refusal to execute the sanction. The Government’s explanations on the matter indicate that Decree No. 18-2001 has been repealed as unconstitutional in respect of its provisions that empower the General Labour Inspectorate to impose sanctions. Since November 2004, this power has been vested in the judicial authorities of first instance. The Committee reminds the Government that, according to the Convention, the power to issue orders and the power to bring legal proceedings may both be exercised either directly by the inspectors or by other authorities at the request or recommendation of labour inspectors. The conditions for exercising these powers are defined in *Articles 13 and 17*. The Convention contains no provision specifying the authority competent to impose penalties. According to *Article 18*, penalties must be provided for by national laws or regulations and effectively applied. They must furthermore be adequate. ***The Committee would be grateful if the Government would provide copies of the texts governing the prosecution and punishment of breaches of the legislation on conditions of work and the protection of workers while engaged in their work, and of obstructions to the performance of labour inspectors’ duties.***

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

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1994)**

The Committee notes the Government’s detailed report for the period ending on 1 September 2006, containing information in reply to its previous comments, particularly with regard to the comments made by the Trade Union Confederation of Guatemala (UNSI TRAGUA) in October 2002 and August 2004, and also by the National Federation of State Workers’ Unions of Guatemala (FENASTEG) in October 2002. The Committee also notes the documents attached as appendices to the report.

1. *Articles 8 and 20(a) of the Convention. Need to improve the conditions of service of labour inspectors with a view to respecting the professional code of ethics.* ***Since this issue also concerns the application of Convention No. 81, the Committee invites the Government to refer to its comments under Articles 6 and 15(a) of this Convention.***

2. *Articles 15 and 16, paragraph 1(c)(iii). Reinforcing technical investigation equipment and instruments for inspectors in agriculture.* The Committee notes that, in reply to the comments from UNSITRAGUA concerning the lack of suitable equipment for taking and analysing samples of products handled in agricultural undertakings, the Government states that labour inspectors have the support of the Social Security Institute for this purpose, and this, it claims, remedies the deficiencies of the labour inspectorate in this field. ***The Committee requests the Government to indicate: (i) the practical arrangements for this cooperation, i.e. indicate the geographical distribution of the competent structures of the Social Security Institute; (ii) by whom and by what means samples of products, chemicals or pesticides handled and used in agricultural undertakings are taken; (iii) within what deadlines and in what manner the inspectors concerned are notified of the results of the analyses undertaken; (iv) whether the Social Security Institute makes relevant***

*recommendations in cases of reported irregularities which might constitute a danger for workers; and (v) if applicable, the measures taken by the labour inspectorate as follow-up. The Government is also requested to send copies of any relevant documents.*

3. *Article 9. Suitable training for labour inspectors in agriculture. Improvement of technical skills.* Since UNSITRAGUA considers that inspectors also lack the necessary training to exercise their powers in the field of technical and scientific investigations, the Government has supplied information of a general nature on the training of labour inspectors as a whole. The Committee notes this information, but considers that efforts should be made to improve the particular skills necessary for inspecting conditions of work in agriculture which expose workers, their family members and the environment to specific risks. Recent information has highlighted the adverse effects on both workers and the general public of products used for treatment in banana plantations in certain countries. It is important that the labour inspectorate, which has free access to agricultural undertakings and which has legal powers with respect to the control of products and substances, should be able to play its role fully in this regard. ***The Committee therefore requests the Government to take measures as quickly as possible to provide labour inspectors in agriculture with adequate skills and to keep the Office informed.***

4. *Improvement of means of communication for labour inspectors in relation to indigenous peoples.* With regard to the issue raised by UNSITRAGUA concerning inspectors' lack of knowledge not only of the languages but also of the customs of indigenous peoples and the resulting difficulties of communication for the performance of their duties in the agricultural undertakings of the regions concerned, the Committee notes with satisfaction that, following the reduction in the language training programmes of the Mayan Languages Academy which were launched for officials in 2004, an agreement has been reached with the authorities of the Kaqchikel linguistic community for the provision of this teaching and the teaching of other important aspects of Mayan culture. Some regional offices now have staff who speak the language of their area of activity and three-year postgraduate study programmes were launched in 2006 for officials of the Ministry of Labour. Moreover, in conformity with Decree No. 19-2003, the Ministry of Labour added to the job descriptions of various labour inspection posts the requirement of sufficient linguistic competence to be able to communicate with the populations of the areas in which they are required to perform their duties. These skills are taken into account for transfers and promotions.

5. *Articles 18, 22, 23 and 24. Role of labour inspectors in agriculture in the prosecution and sanction of contraventions. Referring also to its comments under Convention No. 81 (Articles 13, 17 and 18), the Committee would be grateful if the Government would indicate the manner in which effect is given to the abovementioned provisions of the Convention to encourage agricultural employers to observe the legal provisions relating to conditions of work and the protection of workers.*

6. *Conditions of work in agricultural undertakings producing for multinational agri-food enterprises.* In its previous comments, the Committee noted the information supplied by UNSITRAGUA to the effect that the legal provisions on the length of the working day did not apply in the abovementioned enterprises. The organization referred to conditions of work which resembled forced labour, with overtime imposed on workers to reach production targets not being paid. According to UNSITRAGUA, the Ministry of Labour has given full latitude to the employers concerned, in the context of collective bargaining, to exempt piecework from the scope of the legislation concerning overtime and the labour inspectorate refused, by resolution LPR/ahd 6133-2002 of 25 July 2002, to express an opinion on the matter. The complaint UNSITRAGUA filed against this resolution with the Ministry of Labour and Social Welfare on 19 September 2002 had no effect, and forced labour continues to be practised with impunity, meeting with indifference on the part of the labour inspection services. In its comments of 2004, UNSITRAGUA pointed out that the Ministry of Labour neither ordered nor even planned to order an investigation into the cases it referred to.

According to the Government, contrary to the allegations made by UNSITRAGUA, a committee composed of a labour inspector and a deputy labour inspector was established to deal with disputes in banana plantations. It also points out that the trade unions of the undertakings concerned have been negotiating a collective agreement on conditions of work for three years, with the support of the UNSITRAGUA legal department and with action on the part of the deputy labour inspector. The form of remuneration has been negotiated by the parties. Under section 88 of the Labour Code, remuneration can be according to unit of time, by item or according to participation in profits, etc. According to the Government, working hours in excess of eight hours during the day, seven hours in a combined period and six hours at night are duly paid. It considers that the allegation of forced labour is therefore unfounded. ***The Committee would be grateful if the Government would ensure that inspection visits are as frequent as possible in all enterprises where conditions of work contrary to the national legislation are suspected and supply all relevant information and copies of collective agreements concluded in undertakings which produce for multinational enterprises in the agri-food sector.***

The Committee is raising a number of other matters in a direct request to the Government.

## Guinea

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)***

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:

1. *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, paragraph 3). The Government is requested to transmit information on any progress made in this regard in its next report.**

2. *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 also sending a direct request to the Government on a particular point.

## Guyana

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)**

1. *Obligation to report pursuant to article 22 of the ILO Constitution.* The Committee notes with interest 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.**

2. *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)–(g) of Article 27 in the annual report on its work.**

## Haiti

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)**

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

With reference to its previous comments, the Committee takes due note of the Government's assurances that it will soon provide a detailed report on the application of the Convention. It notes the appointment of a new coordinator of regional labour inspection offices, as part of a series of measures to re-establish the inspection services throughout the country. *The Committee requests the Government to describe the progress achieved in this respect in its next report, providing replies that are as detailed as possible to the questions contained in the report form approved by the Governing Body of the ILO.*

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

## India

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)**

The Committee notes the Government's report in reply to its previous comments and the detailed statistics accompanying it. It also notes the discussions of the Indian Labour Conference on the monitoring of the application of labour legislation which took place in April 2007.

1. *Article 12, paragraph 1(a) and (b), of the Convention. Free access of inspectors to workplaces. (i) Inspection visits (period of time).* In its previous comments, the Committee emphasized the risk of different interpretations from one state to another of the provisions of labour legislation and, in particular, the provisions relating to the rights and obligations of labour inspectors. In reply, the Government points out that the consistent application of the Factories Act, 1948, throughout the country is ensured by the dissemination of standard regulations drawn up by the Directorate General, Factory Advice Services and Labour Institutes (DGFASLI), which serve as a model for implementing regulations in the various states. The Government explains that the content of these regulations is discussed at an annual conference of chief inspectors organized by the DGFASLI. The Committee notes, however, that these regulations do not exist in all states and that the model regulations do not contain any details regarding the period of time during which inspection visits may be carried out or regarding how the expression "at a reasonable time" used in the labour legislation shall be interpreted. The Committee emphasizes in this respect that the abovementioned provisions of the Convention according to which inspectors must be empowered "to enter freely ... at any hour of the day or night any workplace liable to inspection" and "to enter by day any premises which they may have reasonable cause to believe to be liable to inspection" aim to enable inspections to be carried out wherever they are necessary and technically possible, with a view to ensuring the protection of workers. Inspectors must therefore have the power to decide the appropriate time for undertaking an inspection visit. *The Committee requests the Government once again to take the necessary steps to ensure that the legislation concerned and the standard implementing regulations for the Factories Act and also the regulations adopted by the states are supplemented by provisions which expressly provide labour inspectors with the right of free access to industrial and commercial workplaces, in accordance with the provisions of Article 12, paragraph 1(a) and (b), of the Convention, and hopes that the Government will be in a position to supply information in its next report on all progress made in this regard.*

*(ii) Workplace inspection visits in export processing zones and special economic zones, and in the information technology (IT) and IT-enabled service (ITES) sectors.* The Committee notes, according to the statistics sent by the Government in reply to its previous comments, that very few inspections have been undertaken in these zones and fields of activity which are expanding rapidly in a number of states. The Government also indicates that IT and ITES activities are not covered by the Factories Act in the vast majority of states. *In view of this information, the Committee requests the Government to indicate the legal provisions applicable to conditions of work in these sectors of activity, whether or not export processing zones or special economic zones are concerned, at central or state level, and to indicate the manner in which the application of these provisions is monitored. In addition, the Committee requests the Government once again to supply available statistics on the number of enterprises and workers in the abovementioned sectors, indicating, if applicable, the workplaces and workers covered by the labour inspectorate, the number of authorized inspectors, contraventions recorded, penalties imposed and also the number of industrial accidents and cases of occupational disease reported.*

*(iii) Inspections in the State of Haryana.* The Committee notes the information supplied by the Government in reply to its previous comments concerning measures likely to limit inspection visits in this state, in particular in workplaces in the IT and ITES sectors. The Government states that the labour inspection staff consists of 87 labour inspectors, 22 factory inspectors, four doctors and two surgeons for all the districts of Haryana. It also points out that 2,505 inspections pursuant to the Factories Act and 26,131 inspections pursuant to the Shops and Establishments Act were carried out in 2005, including in the abovementioned sectors, under a self-certification system. *The Committee would be grateful if the Government would supply information in its next report on the working of the self-certification system, on its impact*

*on the frequency and effectiveness of inspection visits and also on arrangements for the verification of information supplied, the handling of any disputes and action taken with regard to reported contraventions.*

2. *Articles 10, 11 and 16. Coverage of the inspection system.* According to the data supplied on the number of inspection service staff, the number of workplaces and workers employed therein and the number of inspection visits conducted, compiled in the “reference note” published by the DGFASLI in 2005, the scope of inspection service activities in terms of workers covered and workplaces visited varies considerably from one state to another. ***Emphasizing the importance of the role of labour inspectors in the protection of workers, and particularly in combating child labour, the Committee requests the Government to take the necessary steps to ensure better coverage of workplaces and workers liable to inspection throughout the country in the light of the needs of each state (increasing staff numbers, increasing the number of inspection visits, etc.).***

3. *Article 18. Adequacy of penalties.* Specifically regarding the penalties and fines applicable to violations of the Factories Act and the Dock Workers (Safety, Health and Welfare) Act, 1986, the Government merely states, in its report sent in 2006, that it is considering amending the provisions of these laws which set forth penal sanctions. ***With reference to its previous comments, the Committee requests the Government to supply information in its next report on all developments in this regard and on any legislation adopted.***

The Committee is also raising a number of other points in a direct request to the Government.

## Ireland

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1951)***

The Committee notes the Government’s detailed report and also the information in reply to its previous comments. Also referring to its comment of 2006 under the Occupational Safety and Health Convention, 1981 (No. 155), the Committee notes the content of the new Act on occupational safety, health and welfare adopted in 2005 and its implementing legislation, as disseminated on the Health and Safety Authority web site ([www.hsa.ie](http://www.hsa.ie)), which also contains substantial, regularly updated documentation on the activities of this tripartite body, its results, and also numerous publications of a practical, economic and pedagogical nature. The Committee particularly welcomes the number and quality of handbooks and codes of good practice – also available on the web site – applicable to activities which expose workers to high risks of accidents and specific pathologies (laying and maintenance of roofs, carriage and handling of heavy loads, working with asbestos, handling of chemicals, working at height, etc.), together with practical tools which are necessary for their effective implementation in the workplace.

1. *Article 3, paragraph 1(a) and (b), of the Convention. Strengthening the complementary nature of prevention and enforcement in labour inspection.* The Committee notes with interest that the provisions of the Act of 2005, dealing with the duties and powers of inspectors and also the relevant obligations of employers and workers with regard to occupational safety and health, reflect the wish of the legislative bodies to balance prevention and enforcement in labour inspection. Incorporating sanctions applicable to offenders into the relevant legislation also bears witness to the importance attached to inspection and the genuine desire to effectively combat violations which jeopardize the health and safety of workers.

2. *Articles 5(a), 17 and 18. Effective cooperation between the inspectorate and other governmental bodies and institutions with a view to publicizing and stopping violations.* The Committee notes that the Authority is empowered by the new Act to publish a list of enterprises and persons convicted of violations and also the grounds for the convictions. It also notes the dissemination on the Internet of legal decisions issued each year since 2001 with respect to offenders under health and safety legislation. These measures constitute an extremely useful example of cooperation between the inspectorate and the judicial authorities. As the Committee emphasized in its 2006 General Survey on labour inspection, the effectiveness of the sanctions available to the labour inspectorate depends to a large extent on the way in which the judicial authorities deal with the case files referred to them by or on the recommendation of the labour inspectors (paragraph 158). Moreover, at the same time as enhancing the credibility of the labour inspectorate, publicity thus given to infringements and negligence which jeopardizes the health and safety of workers can indeed be an effective deterrent, firstly, giving rise to fiscal or economic measures vis-à-vis the offenders (difficulties with access to credit or to the award of grants and other social advantages) and, secondly, encouraging employers and workers in general to comply with the legislation more scrupulously (see paragraph 283 of the abovementioned General Survey).

3. *Economic impact of the legislation on safety and health at work.* The Committee notes with interest the INDECON report on the economic impact of the legislation on occupational safety, health and welfare since 1989, published in 2006. This report, which is based on research using different approaches in a number of industrialized countries, testifies to the growing interest in this issue shown by economic, political and social players and decision-makers. The report observes that the optimization of socio-economic benefits as a result of relevant legislation also depends, in all cases, on the efforts made at all institutional levels and at the general level of enterprises and society to establish a genuine culture of health and safety at work. These efforts are reflected not only in relevant legislation and regulations, the provision of technical advice and information to the social partners, both in preventive and remedial forms, but also in an effective supervisory system of a coercive and deterrent nature.

4. *International dissemination and exchange of good practice in labour inspection.* The Committee also congratulates the Government on the prestigious international award recently received by the Authority for its revolutionary Safe System of Work Plan (SSWP), as an expression of its capacity to make known, promote, implement and apply in other countries all good innovative practices in the field of safety and health in the construction industry (information on the abovementioned web site).

## Italy

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)**

The Committee notes the Government's report received in October 2006, its replies to its previous comments and the substantial attached documentation, including the explanatory circulars 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.

1. *Article 3, paragraph 2, of the Convention. Inspection of conditions of work and monitoring and sanctioning of illegal employment and unauthorized work.* As the Committee emphasized in its previous comments, 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. In paragraph 77 of its 2006 General Survey on labour inspection, the Committee recalled that neither the Labour Inspection Convention, 1947 (No. 81), nor the Labour Inspection (Agriculture) Convention, 1969 (No. 129), contain any provision suggesting that any worker be excluded from the protection afforded by labour inspection on account of their irregular employment status. In this respect, it referred to Article 4 of Convention No. 129, which states that the system of labour inspection in agriculture must apply to all employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract. The Committee pointed out that, during the preparatory work for the adoption of this provision, most of the member States which responded considered that the existence of a wage relationship with the operator should be the determining factor in defining the workers covered. In paragraph 161 of the abovementioned General Survey, the Committee observed that, in view of the growing numbers of foreign and migrant workers in many countries, the labour inspectorate is often asked to cooperate with the immigration authorities and that such cooperation should be carried out cautiously, keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers and to improve their working conditions. In this respect, it should be emphasized that the expression "while engaged in their work" used in *Article 3, paragraph 1(a)*, of the Convention indicates that the protection afforded by labour inspection must be provided to workers throughout their period of employment. The Committee notes that numerous structural and legislative measures adopted to implement Legislative Decree No. 124/2004 focus on strengthening the powers of the Ministry of Labour and Social Policy for combating unauthorized work and illegal employment and that labour inspectors play a major role in this process. It considers that the role assigned to labour inspectors in this context 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. The achievement of this objective by inspectors largely depends on the cooperation of all workers, especially in the form of reports and complaints to labour inspectors, irrespective of the type or form of the contract of employment. Systematically involving labour inspectors in coordinated operations to combat illegal employment does nothing to promote a climate of confidence, which is necessary for such cooperation on the part of workers having an irregular status as regards their residence and employment. On the contrary, it represents an obstacle to the opportunities for inspectors to obtain information regarding the conditions of work experienced by workers in establishments to which this applies the most.

The Committee cannot therefore overemphasize 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. Such a separation in no way excludes the possibility of establishing a form of collaboration which involves 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. In order to remain in conformity with the purpose of their duties, the action taken by inspectors should enable the implementation of legal proceedings against employers guilty of contraventions, entailing not only the imposition of adequate penalties in accordance with the various categories of contraventions but also the requirement to pay any outstanding sums owed to the workers concerned for the actual duration of their period of employment. The 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 hopes that the Government will take steps 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.***

2. *Articles 20 and 21. Publication and communication to the ILO of an annual inspection report.* The Committee notes that, on account of institutional reforms undertaken in relation to labour inspection, including methods for the collection of statistics, the Government considers that it is not appropriate to publish an annual report in the immediate future. ***The Committee hopes, however, that it will be possible to publish this report in the near future, that it will***

contain detailed information on each of the matters covered by Article 21 and that a copy will be sent to the ILO within the deadlines required by Article 20.

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1981)**

The Committee notes with interest the detailed nature of the Government's report received in October 2006, and the information on the training sessions for labour inspection staff in 2005 and 2006. It also notes the clarifications on the legislative provisions governing the institutional reform of the labour inspection system and the voluminous implementing documentation attached, including tables reflecting the work of the inspection services in agricultural undertakings.

1. *Article 6, paragraphs 1(a) and 2, of the Convention. Monitoring of conditions of work and monitoring and sanctioning of illegal and unauthorized work.* With reference to its comments under Convention No. 81 on this subject, the Committee emphasizes 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". 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 detection of undertakings guilty of contraventions and on prevention in this area. In view of the results of these controls, even though there is no doubt that measures were necessary to put a stop to this phenomenon, the Committee nevertheless considers, as it does in relation to Convention No. 81, that the role thus assigned to labour inspectors 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 legal provisions. *The Committee hopes that the Government will take steps to re-establish labour inspectors working in the agricultural sector in the duties defined by the Convention and 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 all progress made in this respect and to inform it, if applicable, of any obstacles encountered.*

2. *Articles 26 and 27. Publication and communication to the ILO of an annual inspection report.* *In this respect, the Committee also refers to its comment under Convention No. 81 and hopes that detailed information on each of the subjects covered by Article 27 will be published soon in an annual report, with a copy of it to be sent to the ILO within the deadline prescribed by Article 26.*

## **Republic of Korea**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1992)**

1. *Article 8 of the Convention. Increasing the proportion of women in the staff of the labour inspectorate.* With reference to a point raised by the Federation of Korean Trade Unions (FKTU), concerning the need to raise the proportion of women inspectors in the labour inspectorate in response to the strong increase in women workers, the Committee notes with satisfaction the steady progress made by the Government in this respect. Between 2001 and 2007, the proportion of women in the staff of the inspectorate rose from 12 to 22 per cent, thereby also responding to the request by the Committee on the Application of Standards of the International Labour Conference (92nd Session, June 2004) to increase the number of women in the staff of the labour inspectorate so that inspection services adequately address certain issues relating to the conditions of work of women.

2. *Articles 10 and 16. Staff numbers of the labour inspection services and effectiveness of the system.* The Committee notes with interest the Government's indication that the appointment of 374 new inspectors in 2006 made it possible to achieve a significant increase in the number of inspections, reduce the number of days necessary to process complaints relating to labour legislation and reduce the number of labour disputes through the strengthening of prevention functions. *The Committee would be grateful if the Government would continue to provide detailed information on the operation of the inspection system, and in particular to indicate the total number of workplaces liable to inspection by the inspection services and the number of inspections carried out over a specified period.*

The Committee is also addressing a request directly to the Government on certain matters.

## **Latvia**

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1993)**

Further to its previous comments, the Committee notes with satisfaction the detailed information provided by the Government on the application of the Convention, with each development illustrated by precise data reflecting, most notably, the importance given by the public authorities to the tripartite aspect of this instrument, to the coordination of the tasks and responsibilities of the labour administration system, to the criteria for selecting and remunerating public labour officials and to the need to provide them with conditions of service and work which allow them to continue in their posts and improve their skills and qualifications.

The Committee also notes with interest the proliferation of collective agreements, notably in undertakings where there is trade union representation, and that, within the framework of the PHARE project on the promotion of bipartite social dialogue, a web site has been created (<http://www.socialaisdialogos.lv>) to familiarize the public with this issue. It also notes that a review of the Law on trade unions was undertaken in 2004, with a view to bringing it into line with ILO Conventions, Recommendations and resolutions and ensuring that the decisions and agreements adopted as a result of negotiation are of a binding nature.

*The Committee would be grateful if the Government would indicate any changes in the functioning of the labour administration system over the period covered by the next report and provide a copy of the Trade Union Act once it has been adopted.*

## Lebanon

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

The Committee notes the Government's reports, received respectively in September 2005 and October 2007, the information provided in reply to its previous comments and the texts adopted during the periods covered.

1. *Article 12, paragraph 1(a), of the Convention. Right of labour inspectors to enter freely any workplace liable to inspection.* Further to its previous comments in which it drew the Government's attention to the need to establish the right of inspectors to enter freely workplaces liable to inspection at any hour of the day or night, without taking into consideration statutory working hours, the Committee notes with satisfaction that, further to its request, Decree No. 3273 of 26 June 2000 has been amended in this respect by Decree No. 16051 of 29 December 2005. Under section 1 of the new Decree, labour inspectors are now authorized, in accordance with *Article 12, paragraph 1(a)*, of the Convention, to enter freely and without previous notice any enterprise or establishment liable to inspection during and outside normal working hours.

2. *Article 7. Training of labour inspectors.* The Committee notes with interest that it is planned to organize in the National Management Institute a course intended for labour inspection staff covering all the ratified international Conventions and the measures necessary for their application. *The Government is requested to provide detailed information on the implementation of this initiative, on the content of the planned training programmes, the frequency at which they are to be held and the number of participants.*

3. *Article 10. Strengthening the numbers of men and women labour inspectors. Noting the Government's announcement of an increase in the labour inspection staff, including those responsible for prevention and safety, with a view to being able to discharge the functions assigned to them, the Committee would be grateful to be provided with information on the number and various categories of men and women inspectors who are currently active, their geographical distribution and the new posts envisaged in the budget.*

The Committee is addressing a request directly to the Government on certain points.

## Libyan Arab Jamahiriya

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)**

*Articles 20 and 21 of the Convention. Obligation to publish and send an annual report on the work of the labour inspection services to the ILO.* The Committee notes that, despite its repeated requests for many years, effect has still not been given to *Article 20* concerning the central labour inspection authority's obligation to publish and send an annual report on inspection activities to the ILO and to *Article 21* concerning the information that such a report should contain with respect to the subjects covered in *clauses (a) to (g)*. The various statistical tables on industrial accidents and workers in receipt of compensation or a pension contain no analysis enabling the Committee to evaluate the resources and results of labour inspection in terms of the prevention of occupational risks during the six-year period covered. No information is available concerning the number of workplaces liable to inspection, the number of workers occupied in them, the violations reported and the penalties imposed on those responsible for them, so that the data concerning the numbers of labour inspectors sent in each of these reports by the Government shed no light to enable an evaluation of the extent to which human resources are matched to the protection needs of workers in the country who should be covered by inspection services under the terms of the Convention. *The Committee urges the Government to adopt measures to give full effect to the abovementioned Articles of the Convention on the basis of the developments described in its 2006 General Survey on labour inspection with regard to the usefulness at national and international level of the publication of an annual inspection report and its regular transmission to the ILO (paragraphs 320–345). It would be grateful if the Government would also refer to the valuable guidance contained in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), with regard to the drawing up of an annual report, which would help to achieve a true evaluation of the functioning of the labour inspection system and ongoing improvements to it.*

## Luxembourg

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)**

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.

1. *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.***

2. *International cooperation in labour inspection.* The Committee notes with interest 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 with interest 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 addressing a request on another point directly to the Government.

## Madagascar

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)**

With reference to its previous comments under this Convention and also to its comments in 2006 under Convention No. 129, the Committee notes with satisfaction the introduction of provisions in the new Labour Code adopted by Act No. 2003-44 giving substantial effect to the Convention. It also notes with interest the information supplied by the Government in its reports received at the ILO in September 2006 and October 2007, to the effect that regulations to implement the new Code are being drafted. ***The Committee would be grateful if the Government would keep the Office informed of the progress of the process under way and send copies of any implementing regulations adopted.***

1. *Article 2 of the Convention. Scope of the competence of labour inspection.* Section 1 of the new Labour Code states that the Code is applicable to all employers, irrespective of their nationality, status or sector of activity, and to all workers whose labour contract, whatever its form, is executed in Madagascar. By amending section 1 of the former Code by making a reference to the nationality of the employer, the new Labour Code raises the principle of applicability to employers and workers in export processing enterprises and zones. ***The Committee welcomes this legislative progress and requests the Government to supply information on the measures taken since the adoption of the new text to give effect to this provision.***

2. *Article 11. Conditions of work of labour inspectors.* With reference to the previous Government reports concerning the poor conditions of work of labour inspectors and the lack of equipment and transport facilities owing to the meagre budgetary resources allocated to the labour administration, the Committee notes with interest that section 235 of the Labour Code provides that the competent authorities are now obliged to adopt the necessary measures to provide inspectors with local offices which are equipped in such a way as to meet the needs of the services and are accessible to all interested parties, and with transport facilities necessary for the performance of their duties where no suitable public transport facilities exist, and are also obliged to adopt measures to ensure the reimbursement of travel and incidental expenses necessary for the discharge of their duties. The Code also states that the implementation of these measures is covered by the state budget. ***The Committee would be grateful if the Government would supply any information, together with any relevant legal, administrative or financial text, or any document describing the measures taken for the purposes referred to by this section of the Labour Code and the impact of these measures on the practical operation of the labour inspectorate.***

3. *Article 12. Investigatory powers of labour inspectors.* The Committee notes with satisfaction that its repeated comments on the need to take steps to make inspections more effective through measures to implement *paragraph 1(c)(i), (ii), (iii), and (iv)* of this Article of the Convention, concerning the investigatory powers of labour inspectors, have been given effect by section 238 of the new Labour Code. ***It would be grateful if the Government would supply information on the way in which effect is given, or planned to be given, in practice to these new provisions, and would send copies of any relevant texts or documents.***

4. *Articles 17 and 18. Legal proceedings and applicable penalties.* The Committee notes with interest that under section 239 of the new Labour Code, any failure by a given party to respond to a summons issued by the labour inspector constitutes an obstruction of an investigatory police officer in the performance of his duties and is liable to the penalties laid down by section 473 of the Penal Code. It also notes with particular interest the obligation imposed by the same text on the State Prosecutor to submit directly to the judge within one month reports submitted by the labour inspector. Such a provision emphasizes the authority vested in labour inspectors and the consideration which must be given by prosecuting magistrates to the socio-economic role of the labour inspectorate. ***The Committee would be grateful if the Government would supply information on the practical application of the provisions of section 239 of the new Labour Code, together with any relevant document, such as copies of summons to appear in court, or any judgement or extract of a judgement issued further to an inspection report.***

5. *Articles 10, 11 and 16. Resources matched to the needs of the labour inspectorate.* The registration of workplaces liable to inspection, the identification of activities performed therein and the categories of workers employed therein are key elements in recognizing the needs of the labour inspectorate and setting priorities for action in order to gradually meet those needs, in cooperation with other bodies, especially financial authorities and institutions for training inspection staff. ***The Committee sincerely hopes that the Government will adopt measures to this end as soon as possible and will be in a position to report on them in its next report.***

The Committee is addressing a direct request to the Government on a number of other points.

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)**

The Committee takes note of the Government's report and the information replying to its previous comments.

1. *Articles 22, 23 and 24 of the Convention. Awareness-raising among magistrates regarding the prosecution of offenders.* In its previous comments, the Committee noted with interest that a provision had been inserted in the Labour Code requiring the State Prosecutor to submit the labour inspectors' report directly to the judge within one month. It expressed the hope that this progress in the legislation would be accompanied by measures to make the judiciary more aware of the value of treating cases relating to the protection of workers with the necessary seriousness and of making appropriate decisions in each case on the basis of the degree of gravity of the circumstances. The Committee refers the Government to its 2006 General Survey on labour inspection, in which it pointed out that the effectiveness of the sanctions available to the labour inspectorate depends to a large extent on the way in which the judicial authorities deal with the case files referred to them by, or on the recommendation of, the labour inspectors, and notes with satisfaction that the Labour Directorate and magistrates in charge of social matters now attend quarterly work sessions on interpreting and applying the Labour Code, the aim being to prevent labour inspectors' reports of offences from being shelved.

2. *Article 15. Resources needed for labour inspection in agriculture.* The Committee notes from the information sent by the Government that, despite economic difficulties, funds have been found to build new premises for labour inspectors and to repair and refurbish others. It further indicates that the interregional directorates have been given vehicles and that their budgets provide for the purchase of fuel. ***The Committee requests the Government to continue to provide information on the material resources, and particularly transport facilities, available to labour inspectors for the performance of their duties, bearing in mind the distance they have to travel as agricultural undertakings are widely dispersed.***

3. *Articles 25, 26 and 27. Periodic and annual reports on the activities of labour inspectors.* The Committee notes with interest that inspection visit forms have been designed and sent to outside offices in order to collect information on the activities of the labour inspection services and prepare the reports required by the abovementioned Articles of the Convention. It notes the Government's indication that the annual report is not yet available. The Government nonetheless provides data on the agricultural undertakings liable to inspection and the visits for the province of Antananarivo (first half of 2007). The Committee stresses how useful such reports are in assessing the working of the labour inspectorate and determining the resources needed to improve it by making the necessary budgetary provisions. It reminds the Government that the publishing and sending of an annual report is an obligation, the purpose of which is to elicit the views of the social partners in the country and any proposals they may have for improvement of the operation of the system, and also, at international level, to enable the ILO supervisory bodies to ascertain the extent to which the Convention is applied in law and in practice and to offer relevant guidance. ***The Committee requests the Government to send with its next report a copy of the standard inspection visit form for agricultural undertakings and, as soon as it is prepared and published, a copy of the annual report on the activities carried out by the labour inspection services in agriculture. It hopes that information on the impact of the quarterly work sessions will be reflected, in the report, in statistics on judicial decisions penalizing the offences reported by labour inspectors.***

4. *Labour inspection and child labour.* The Committee notes from the information in the Government's report on the application of the Minimum Age Convention, 1973 (No. 138), that the most recent statistics available on child labour are from 1999 but that according to the first estimates of a national survey on child labour conducted by the National Statistics Institute with cooperation from the ILO/IPEC programme, the proportion of children in work has risen from 1 in 7 to 1 in 3. The final results of the survey should be available in early 2008. In its report on the application of the present Convention, the Government specifies that labour inspectors have already been trained to combat child labour but that

they are having difficulty in carrying out controls in remote agricultural undertakings. However, according to the Government, with the recent establishment of regional observatories on child labour (ORTEs) and the launching of an institutional support programme, in the process of being approved by the ILO, it should be possible to build the capacity of labour inspectors and the local authorities to further the combating of child labour. The Committee notes that in 1999 child labour in rural areas reached very worrying proportions: 22 per cent in the 6 to 9 age group and 36 per cent in the 10 to 14 age group. It accordingly hopes that, under the abovementioned programme, a special effort will be made for children working in agricultural undertakings. In view of the limited resources of the inspectorate and the difficulty of getting to remote farms, the Committee strongly encourages the Government to promote effective cooperation between the labour inspection services and other players involved in combating child labour (*Articles 12 and 13 of the Convention, and Paragraphs 1 and 2(d) of Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)*), particularly the social partners, the relevant local authorities and public institutions, and schools. ***The Committee would be grateful if the Government would keep the Office duly informed of any measures implemented or envisaged to these ends and to continue to provide information on the activities carried out by labour inspectors to combat child labour in the agricultural sector in particular, and on the results thereof.***

The Committee is addressing a request concerning other matters directly to the Government.

## Malawi

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)***

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

The Committee notes the information supplied by the Government in its report received in November 2005, and the copy of the TEVET Act, No. 6 of 1999. It also notes the Government's comments replying to the observations of the Malawi Congress of Trade Unions (MCTU) received by the ILO on 5 April 2005.

*Situation of the labour inspection system.* The MCTU alleges, contrary to the Government's statement in its last report that the Labour Inspectorate has been reinforced, that the Inspectorate has done nothing whatsoever about the many breaches of the law by employers. One enterprise allegedly dismissed 280 employees without any consultation of workers' representatives, and another got rid of a worker two years before he was due to retire. In 2000, more than 50 employees were dismissed after a union was formed in the enterprise where they were employed, and in another enterprise two workers who had received MCTU training were laid off.

The Committee notes that in reply to the MCTU's allegations, the Government states that it knows nothing of the instances of violation cited, but that if any worker feels that his/her rights have been violated, he or she is free to lodge a complaint at the district labour office, the industrial relations court or any other court.

As to the human resources of the Inspectorate and their qualifications, the Government indicates that six new inspectors have been hired to strengthen the Occupational Safety and Health Directorate. It also states that a five-day workshop was organized in the context of the Improving Labour Systems in Southern Africa (ILSSA) project, with financial assistance from the ILO, and was attended by 23 labour officers, four union members and two employers' representatives.

As regards material resources, the Committee notes that UNICEF has given the Ministry of Labour and Vocational Training 22 motorcycles, which has greatly strengthened the inspections in 11 districts, and that two motor vehicles have been deployed in the southern region and central region. The Committee further notes that seven motorcycles were to be distributed to districts that have none.

With regard to the increase in the number of occupational accidents in recent years, the Government expresses the need for technical assistance from the ILO through capacity-building programmes on occupational safety and health matters.

With reference to the MCTU's observations and a report on a mission carried out by the Harare Regional Office from 1 to 4 May 2006 as part of the project to strengthen administration systems in the countries of southern Africa, the Committee notes that the MCTU's views coincide with those of the Employers' Consultative Association of Malawi (ECAM) regarding the weaknesses of the inspection system and their causes: a lack of financial resources, transport facilities and equipment; low morale and high staff turnover of labour officers and inspectors. Both organizations note that the functioning of the system is affected by a lack of dialogue and of consultation between the social partners and regret that the Government has sent them neither a copy of the ILO's report on the Convention nor the annual inspection report, and that the Labour Advisory Council does not meet regularly enough given the subjects that it could discuss. The Committee further notes that 50 labour inspection posts remain vacant although the Government indicated that 18 of them would shortly be filled by candidates with a university education.

Having examined labour inspection and particularly the coordination mechanisms and system of reporting between central and district offices, the Committee has come to the view that there are no structural obstacles to the setting up of a labour inspection system but that the latter falls short of the Convention in a number of ways:

- the lack of a labour inspection policy setting relevant guidelines and rules of conduct for inspectors;
- insufficient coordination between inspection services and between the latter and the central authority, and the lack of contact between the services responsible for occupational safety and health and other inspection services;
- difficulty of setting up cooperation between social partners because of the current lack of dialogue;
- the planning of inspections is not systematic and the inspection services fail to react when notified of violations;
- there is no register of establishments which can guide inspectors as to the inspection needs and the establishments to be targeted;
- there are no individual files for establishments inspected to facilitate easy follow-up.

The mission concluded that the strengthening of the inspection system should be stepped up with a view to attaining decent work objectives and promoting sound and fair labour market governance, particularly now that there is an opening up to foreign investment. It made the following recommendations:

- (1) the Ministry should involve the social partners in developing the labour inspection system in order to secure their cooperation;
- (2) the Ministry should formulate a labour inspection policy that will provide guidance for inspections;
- (3) there should be more planning of inspections so that the Inspectorate can play its preventive role, particularly in certain branches of activity;
- (4) the office of the chief labour officer needs further strengthening to enable it to play more of a role in the setting of annual targets and monitoring the performance of inspections in the field, both qualitatively and quantitatively;
- (5) there should be closer collaboration between the chief labour officer and the director of safety and health, inter alia, through joint planning, in order to move towards a more integrated inspection system.

***The Committee firmly hopes that the Government will take steps to follow up the mission's recommendations, and will keep the Office informed of any developments in this respect and report to it any difficulties encountered.***

The Committee is addressing a request on a number of 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.***

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)**

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

The Committee notes the information provided by the Government in its report received in November 2005, and its comments in reply to the observations made by the Mali Congress of Trade Unions (MCTU) on the application of the Convention, received by the ILO on 5 April 2005. ***With reference to its observation under Convention No. 81, the Committee requests the Government to provide information in its report under the present Convention on any measure adopted to give effect to the recommendations of the mission undertaken by the ILO's Regional Office from 1 to 4 May 2006, in the context of the project to reinforce labour administration systems in the countries of southern Africa, in so far as such information relates specifically to labour inspection in agricultural undertakings.***

1. ***Ineffectiveness of labour inspection.*** The Committee notes that, according to the MCTU, labour inspectors lack commitment in the area of enforcement, particularly in cases relating to the non-payment of wages in tobacco plantations and disparities in wages between men, women and young persons working in tea and tobacco estates.

The Committee notes that, according to the Government, differences in wages should be explained by the fact that men, women and young persons are not given work of equal value. ***The Committee requests the Government to indicate whether labour inspectors have had cause to examine complaints in this respect and, if so, to provide any relevant document, such as copies of inspection reports or correspondence addressed to the impugned employer or the workers who have made complaints. If not, the Government is requested to take measures to ensure that inspections targeting compliance with wage provisions in the undertakings indicated by the organization are carried out not only on the basis of complaints, but also in a regular manner, so as to encourage employers to comply with the relevant legislation.***

2. ***Article 15(b) of the Convention. Transport facilities.*** According to the MCTU, the Government is not capable of providing inspectors with adequate transport facilities for the discharge of their duties in agriculture because of budgetary constraints. The Government indicates in this respect that, with the donation of 22 motorcycles by UNICEF and seven others in the context of the ILO project for the strengthening of labour inspections systems in Southern African countries (ILSSA), labour inspectors are now able to cover more areas and have since intensified labour inspections in the agricultural sector. ***The Committee takes due note of this information and requests the Government to indicate the measures adopted for the adequate and regular provision of the fuel required for travel by inspectors and the maintenance of motorcycles in view of the remoteness and dispersion of agricultural undertakings and the state of access roads, and also to provide data on trends in the scope of inspection activities as a result of the improvement of transport facilities.***

3. ***Article 8, paragraph 2, and Article 18, paragraph 4. Collaboration between trade unions and the labour inspectorate.*** According to the MCTU, the Government is unwilling for trade union leaders to undertake inspections or accompany inspectors during inspections. The Government indicates that labour officers themselves are unwilling to be accompanied by union leaders as experience has shown that where the Government is running projects on child labour, union leaders have gone to such workplaces and demanded to inspect the workplace. As union leaders, in contrast with labour inspectors, have no legal mandate and are not trained for that purpose, they cannot conduct inspections effectively.

The Government adds that, when labour inspectors visit establishments where union leaders are employed, consultations take place before the inspection and labour inspectors are accompanied by shop stewards. Furthermore, before leaving the establishment, the labour inspector also briefs the management and the union leaders on the findings of the inspection.

With reference to ***Article 8, paragraph 2***, of the Convention, the Committee draws the Government's attention to the possibility of including in the system of labour inspection in agriculture, officials or representatives of occupational organizations, whose activities would supplement those of the public inspection staff, and who should be assured of stability of tenure and be independent of improper external influences. ***As this is an optional provision, the Committee would be grateful if the Government would examine whether, and to what extent, it could envisage making use of this possibility for the needs of the application of the Convention in relation to national conditions.***

The Committee is addressing a request directly to the Government on certain points.

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

## Malaysia

### **Labour Inspection Convention, 1947 (No. 81) (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:

*Publication of an annual report.* The Committee regrets to note that, although the Government indicates in its report that an annual report is compiled by the labour inspectorate, it has nevertheless omitted to transmit this report. **With reference to the repeated requests that it has been making for many years in this connection, the Committee trusts that the Government will take the necessary measures in the near future to ensure that the annual report required by Articles 20 and 21 of the Convention is published and transmitted to the ILO.**

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

## Mauritania

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)**

The Committee notes the information provided by the Government in reply to its previous comment, the observations communicated on 3 September 2007 by the General Confederation of Workers of Mauritania (CGTM) on the operation of the labour inspection system and the observations made by the Association of Labour Inspectors and Supervisors of Mauritania (AICTM) in April 2007 on the status of labour inspectors and controllers.

1. *Articles 1, 3, 10 and 11 of the Convention. Labour inspection system. Human and material resources of the inspection system.* In its previous comments, the Committee noted that the inadequacy of the human and financial resources of the labour inspectorate constituted a major obstacle to the discharge of its functions. It notes the statement by the CGTM in the observations provided to the Office in September 2007 that the limited geographical coverage of the labour inspection system gives rise to difficulties in examining the cases of workers, who are often far from inspection offices. The CGTM emphasizes in this respect the inadequacy of the transport and communication facilities made available to inspectors and supervisors, but indicates that, despite this regrettable material situation, those labour inspectors who are in place play a significant role in the settlement of labour disputes.

The Committee notes with interest the announcement by the Government of the recruitment of ten labour inspectors and ten labour controllers, who will be trained at the National School of Administration (ENA) and abroad, and of the purchase of vehicles and office equipment. **It hopes that the increase in staff numbers and the improvement in the material working conditions of inspection staff will make it possible to reinforce the effectiveness of their prevention and supervision activities, particularly by extending their geographical coverage, and that these efforts will be supported by the mobilization and allocation of resources in the context of technical cooperation projects and international financing.**

2. *Article 6. Status of labour inspectors and controllers.* With reference to its previous comments, the Committee notes with interest the adoption, following several years of preparation, of Decree No. 021/2007/PM of 15 January 2007 issuing the specific conditions of service of the labour administration, which establishes the status of labour inspectors and supervisors. This text contains provisions on grades, promotion procedures and training requirements, and establishes the conditions and procedures for recruitment and the functions and responsibilities of each category of the inspection staff (principal inspector, inspector, principal controller and controller). According to the AICTM, no specific allowance has been established by these conditions of service, whereas all the other administrative bodies benefited from an allowance under a decree adopted in 2007. **Noting that the allowances and bonuses which had been envisaged in the draft decree do not appear in the adopted text and that the Government indicates in its report that it will endeavour to envisage allowances for this body of officials so as to ensure their independence and impartiality, the Committee trusts that the Government will adopt measures in this respect in the near future.**

3. *Article 7, paragraph 3. Training of inspectors.* The Committee notes the detailed information provided by the Government in reply to its requests concerning the courses and seminars followed recently by a number of inspectors and controllers at the African Regional Centre for Labour Administration (CRADAT) in Yaoundé and the ILO Training Centre in Turin. It also notes that under section 14 of Decree No. 021/2007/PM, inspectors and controllers are under the obligation to follow training and further training sessions in the context of a training plan established by the competent ministry. **While taking due note of these provisions, the Committee hopes that the Government will be able to continue its efforts to ensure the training and further training of inspection staff and requests it to provide information on the preparation of the envisaged training plan and on the subjects covered.**

4. *Articles 20 and 21. Annual report on the work of the inspection services.* In reply to the Committee's previous comment, the Government indicates that it has not been possible, due to lack of resources, to produce an annual report on the work of the inspection services in recent years, but emphasizes that the central administration has always endeavoured to provide a summary report of their activities. **The Committee requests the Government to provide with its next report the summary reports available for 2005, 2006 or 2007. It once again hopes that the Government will rapidly take measures 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 the publication of an annual report on the work of the inspection system, particularly with the technical assistance of the ILO in the context of the project for the modernization of labour administration and inspection.*

5. *Labour inspection and child labour.* According to the Government, the results of the study on child labour conducted with the cooperation of UNICEF, to which the Committee referred in its previous observation, are currently being validated. The conclusions of the study show that labour inspectors have not been made aware of the issue of child labour and lack the means to combat child labour. The Committee notes that the Government has requested ILO technical assistance (the ILO/IPEC programme) in this field. ***Emphasizing the importance of the role of labour inspectors in protecting the safety, health and well-being of children, the Committee trusts that the Government will take the necessary measures to ensure that labour inspectors and controllers are provided with the necessary training, powers and resources to take effective action in this respect.***

The Committee is addressing a request directly to the Government on other matters.

## Mozambique

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1977)***

The Committee takes note of the Government's report for the period ending on 31 December 2006, the information sent in reply to its previous comments, and the report of the General Labour Inspectorate for 2006. It also notes the adoption of the new Labour Act (No. 23 of 2007).

*Human and financial resources, material facilities necessary to the working of the inspection system, international cooperation and ILO technical assistance.* With reference to its previous comments in which it noted the low level of human resources both in number and in qualifications and inadequate facilities for the performance of inspection duties, the Committee notes that, according to the Government, the various requests made to partners in the context of international cooperation to improve the transport facilities of the inspection services did not produce the results expected. The Government states that this is because the new Labour Act had not been adopted and that one of the prerequisites was the restructuring of the inspection services. The Ministry has taken the necessary measures: controllers, who hitherto reported to the National Social Security Institute, have now been incorporated into a single body with labour inspectors; furthermore, a new Labour Act was adopted in 2007 and, pending international financial aid to increase the number of vehicles available to the labour inspectorate, the Ministry has already succeeded in mobilizing resources to acquire four vehicles for use by the central services. Now that the inspectorate has been brought together into a single body, it is possible to use human and material resources more rationally. The Committee also notes with interest that with support from the Portuguese-speaking community and technical assistance from the ILO, training is planned for about 100 inspectors, together with computerization of the inspection system. ***The Committee hopes that the Government will shortly be in a position to report progress in the steps taken in relation to international cooperation and technical assistance, and that the functioning of the labour inspectorate will be reflected in the publication of an annual activities report in accordance with Articles 20 and 21.***

The Committee is addressing a request directly to the Government.

## Netherlands

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1951)***

The Committee takes note of the Government's report received on 29 August 2007 and the replies to its previous comments, as well as the communication by the National Federation of Christian Trade Unions (CNV) on the new Act on Working Conditions. It also notes the communications from the Confederation of Netherlands Industry and Employers (VNO-NCW) dated 6 August 2007, and the Netherlands Federation of Trade Unions (FNV) dated 30 August 2007, forwarded by the ILO to the Government on 17 September 2007 and 13 September 2007, respectively. ***The Committee requests the Government to send to the ILO any comments it deems appropriate on the points raised by the above organizations so that the Committee can examine them together with the information contained in the report. It would be grateful if the Government would also provide a copy of the Act on Working Conditions (Health and Safety), which it indicates came into force on 1 January 2007.***

## Niger

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)***

The Committee takes note of the Government's report received on 1 December 2007. Noting that it does not contain information on measures requested in the previous observation, the Committee must therefore repeat the latter, which read as follows:

The Committee notes the Government's report received in September 2005 and the information provided in reply to its previous comments. The Committee has also noted the report of the high-level fact-finding mission conducted from 10 to 20 January 2006 by the ILO further to the conclusions of the Committee on the Application of Standards of the ILC (May-June

2005), on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), and extended to issues of forced labour and slavery.

*Need for a labour inspection audit for determining needs and their satisfaction with ILO support and international financial cooperation.* The Government indicates that, contrary to the statement in its previous report, it has not been possible to mobilize the expected increase in the budgetary allocation for the labour inspectorate for budgetary year 2004 but that it will continue its endeavours in this direction. While indicating that the inspection staff is spread throughout the territory in accordance with availability of its officers and that each regional labour inspection service has a vehicle and a fuel allowance, the Government continues to refer to difficulties regarding the inadequacy, in both quantity and quality, of staff, given the size of the country and the predominance of the informal sector. In the 1997 annual report of the Directorate for Employment Promotion and Occupational Training, it was indicated, moreover, that labour inspections carry out the functions of the Directorate which focus chiefly on matters of employment and training, as attested by the monthly reports for 1999 of the regional inspections for Tarlit and Zbinden, which contain only sparse data regarding inspection activities. According to the conclusions of the ILO's high-level fact-finding mission report, labour inspection (which plays a key role in the campaign against child labour and forced labour) is desperately short of the necessary resources to carry out its various missions, in terms of both human resources and material resources. Consequently, the mission recommended carrying out an audit of the labour inspectorate to determine exactly the type and scope of its needs and considered that, once that had been carried out, the Government, with the support of the ILO and of other United Nations agencies and concerned donors, could endeavour to mobilize the necessary resources.

*The Committee hopes that measures will be taken speedily by the Government, in consultation with employers' and workers' organizations, with a view to assembling the logistical and substantive conditions for launching, under ILO auspices, an audit of the labour inspectorate permitting the progressive application of the Convention in accordance with national priorities and requirements.*

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

## Nigeria

### **Labour Inspection Convention, 1947 (No. 81) (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:

Further to its previous comments, the Committee notes with regret that the very brief report sent by the Government in August 2005 does not contain information allowing the Committee to assess the effect given to the Convention. *It trusts that in its next report the Government will provide full information and that it will take care in particular to reply in detail to the points below, which the Committee has been raising for several years.*

*Staff of the labour inspectorate.* *The Committee requests the Government to describe the manner in which the status and conditions of service of the inspection staff assure them of stability of employment and make them independent of changes of government and of improper external influences, in accordance with Article 6 of the Convention. It also asks the Government to indicate what conditions are applied to their recruitment and what arrangements exist for their initial training and subsequent training (Article 7). The Government is also asked to indicate the strength and geographical distribution of the inspection staff, specifying to what extent these secure the effective discharge of the inspectorate's duties (Article 10).*

*Publication of an annual report.* The Committee observes that no annual labour inspection report has been sent by the Government since 1995. *It hopes that the Government will shortly be in a position to ensure that an annual report on all the subjects covered by Article 21 of the Convention is published every year and is sent to the Office within the prescribed time limits, in accordance with Article 20.*

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

## Norway

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)**

The Committee notes that the Government's report, in reply to its previous comments, and the observation made by the Confederation of Trade Unions (LO) on the application of the Convention, attached to the report, were only received on 5 November 2007 and cannot therefore be examined at the Committee's present session. *The Committee will examine them with any comment that the Government may wish to make on the points raised by the LO at its next session (November–December 2008).*

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)**

The Committee takes note of the Government's report replying to its previous comments.

1. *Article 3, paragraph 1(b), of the Convention. Information and technical advice to employers and workers and their organizations.* The Committee notes with interest that, owing to the influx of many migrant workers and seasonal labour in recent years, particularly in agriculture, the Labour Inspection Authority has launched a campaign to secure decent wages and conditions of work for migrant workers. In particular, the Committee notes with interest that, in the course of this campaign, information on the rights and duties of workers has been produced and translated into several languages.

2. *Article 13. Effective collaboration between the labour inspectorate and the social partners.* With reference to an observation by the Confederation of Trade Unions (LO) to the effect that no arrangement or provision has been made to promote collaboration between the staff of the inspectorate and the social partners in agricultural activities, the Government states that a tripartite body did exist, but was dissolved a few years ago. It nevertheless points out that the Norwegian Farmers' Union is represented in the Advisory Body for the Labour Inspection Authority and that, as such, is part of the tripartite discussions on the overall strategy for the Labour Inspection Authority's activities. The Government further indicates that, in the course of the abovementioned campaign, the most representative organizations of workers and employers in agriculture participated in outlining activities and guidelines for carrying out inspections within this target area.

3. *Article 19. Notification of occupational accidents.* The Committee notes with interest 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.***

4. *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.***

## Pakistan

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)***

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 with interest 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 do its utmost to take the necessary steps in the very near future.***

## Panama

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)**

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

The Committee notes the information contained in the Government's report for the period ending 30 June 2005, the replies to its comments and the annual labour inspection reports for the period 2001–04, as well as the tables of statistics on inspection activities in the region of Panama for 2005.

1. *Article 6 of the Convention. Status of labour inspectors.* The Committee notes that the system of administrative careers (established by Act No. 9 of 20 June 1994) has been relaunched and the titularization of all labour inspectors is envisaged. **However, noting the information on the web site of the Office of the President of the Republic ([www.presidencia.gob.pa](http://www.presidencia.gob.pa)) reporting a draft amendment to the above Act, the Committee would be grateful if the Government would provide precise information on developments in the situation of labour inspectors in this respect, indicating the number of active inspectors, the number of titularized inspectors disaggregated by grade and assignment, and give an indication as to the duration of the titularization process.**

2. *Articles 3, 10 and 16. Numbers of labour inspectors and inspections.* With reference to its previous comments, the Committee notes with interest a strengthening of the staff of the labour inspectorate following a long period of decline up to 2004, during which there had also been a significant fall in the number of inspections. Reminding the Government of the criteria set out in *Article 10* of the Convention for the determination of the number of labour inspectors, the Committee hopes that efforts to achieve an appropriate increase in inspection staff will be continued at a sufficient pace to ensure that, in accordance with *Article 16*, the workplaces covered by the Convention are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal texts relating to conditions of work and the protection of workers. **The Committee would be grateful if the Government would keep the Office informed of any development in this respect and provide information on trends in the geographical and sectoral distribution of workplaces liable to inspection.**

3. *Article 14. Notification to the labour inspectorate of industrial accidents and cases of occupational disease.* The Committee notes the brief information contained in the inspection reports concerning industrial accidents and cases of occupational disease, which only covers the central region of the country, and the indication that inspectors are only informed of accidents belatedly, as the insurance fund is the principal recipient of the relevant information. According to the Government, the inter-institutional occupational health, hygiene and safety technical committee is due to propose measures in the near future intended to give full effect to this provision of the Convention. **The Government is requested to keep the Office informed of developments in the situation in this respect and to indicate the measures adopted or envisaged in law and practice to ensure that in future inspectors are notified in due time of industrial accidents and cases of occupational injury occurring in establishments liable to supervision so that they can adjust their preventive activities accordingly and provide the central authority with relevant statistics and information.**

4. *Labour inspection and child labour.* While noting with interest the inspection activities carried out in the various sectors between 2001 and 2004, the Committee notes in particular that the Child Labour Department of the Ministry of Labour has participated in the work of the commission responsible for the issue of girls and boys engaged in packing work in supermarkets and has envisaged seeking the financial support of IPEC. A review of the country project for the progressive eradication of the worst forms of child labour is reported to have been undertaken with a view to obtaining external financing for the strengthening of institutions and the implementation of relevant activities. **The Committee would be grateful if the Government would provide information on the outcome of the action to seek the necessary funding for the implementation of the country project and on developments relating to inspection activities in the industrial and commercial establishments covered by the Convention.**

5. *Articles 20 and 21. Annual inspection report.* The Committee notes with interest the implementation of the SIAL/ILO-Panama (Information System and Labour Analysis) project designed to strengthen, harmonize and systematize labour statistics. **It hopes that the Government will ensure that, in the near future, the central labour inspection authority is able to benefit from the progress achieved so as to publish and communicate to the ILO, on a regular basis, in accordance with Article 20, an annual report on the activities of the services under its control. The Committee recalls in this respect the guidance provided by Part IV of Labour Inspection Recommendation, 1947 (No. 81), on the appropriate level of detail of the information required by points (a) to (g) of Article 21 so that the annual report can be an instrument for the evaluation and improvement of the labour inspection system.**

**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 and the attached documentation. Although the report was received too late to be examined by the Committee at its present session, the Committee nevertheless reminds the Government that the observations of the Ibero-American Confederation of Labour Inspectors (CIIT), received by the ILO on 4 December 2006, were forwarded to it on 1 March 2007. It notes that the Government's report does not refer to the CIIT's observations and does not therefore provide comments on the matters raised therein. The Committee observes that most of the concerns expressed by the CIIT relate to the following points, on which it has been commenting since 1999.

1. *Article 6 of the Convention. Precarious status and conditions of service of labour inspectors.* According to the CIIT, labour inspectors are not assured of stability of employment as required by the Convention so as to ensure their independence of changes of government and of improper external influences. Any change of government involves the risk that they may lose their job and therefore the independence which guarantees the impartiality and authority necessary for

the discharge of their duties. Furthermore, in the view of the CIIT, the level of their remuneration is very low and does not correspond to their individual qualifications. For example, the head of the Occupational Safety and Health Department, who also carries out inspections, receives a lower salary than that of many other inspectors.

2. *Article 7, paragraph 3. Absence of adequate training for labour inspectors for the performance of their duties.* The CIIT deplores the fact that no appropriate training is provided to inspectors and that they do not even have a guide or manual so that they can perform the duties entrusted to them.

3. *Article 11. Precarious and inadequate nature of working conditions.* In its observations, the CIIT indicates that the premises and working conditions of the labour inspectorate are far from complying with the minimum conditions required by the Convention. For example, the offices of inspectors are not separated by partitions and there is a lack of equipment and materials.

4. *Article 3, paragraphs 1(a) and 2, and Article 18. Low level of supervision; impunity of those committing offences, and the burden of conciliation functions.* The CIIT deplores the fact that the violations that are detected do not give rise to the imposition of the penalties established by the law and that inspectors are principally engaged in conciliation functions. As a result, the authority and impartiality which are necessary in their relations with employers and workers are seriously prejudiced.

***The Committee would be grateful if the Government would provide the ILO with any comment that it deems appropriate in relation to the observations made by the CIIT. It will examine such comments together with the Government's report at its next session.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Poland

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)***

The Committee notes the Government's report received on 31 August 2007 and the replies to its previous comments. It also notes the adoption of the Law on the National Labour Inspectorate on 13 April 2007. ***It would be grateful if the Government would send a copy of this Law to allow the Committee to assess all the amendments made to the legislation giving effect to the Convention.*** However, the Committee already wishes to draw the Government's attention to the following point.

*Article 12, paragraph 1, of the Convention. Right of inspectors to enter workplaces freely.* With reference to its previous observation, the Committee notes that, according to the Government's indications concerning the contents of the new Law, inspections are still subject to previous authorization to be showed to the employer, except in case of emergency when the authorization is to be provided to the employer not later than seven days after the inspection. The Committee notes that despite its 2005 observation, the legislation has not been amended to bring it into conformity with *Article 12, paragraph 1*, of the Convention. It is therefore bound to reiterate its previous observation on this issue, which read as follows.

The Committee notes the adoption of the Act of 2 July 2004 on freedom of economic activity, which amends the Act of 6 March 1981 on the National Labour Inspectorate. The Committee notes that section 8(3), as amended, of the Act provides that inspections may be carried out only upon presentation of an authorization from the Chief Labour Inspector or her or his deputies, or district labour inspectors or their deputies, except where circumstances warrant immediate inspection, in which case the labour inspector must present the authorization within three days of the commencement of the inspection. The same section requires the authorization to determine the scope of the inspection in terms of its subject and to indicate the date of commencement and the expected date of completion of the inspection. The Committee further notes that section 80 of the Act on freedom of economic activity requires the employer's presence at inspections (except in the instances cited in the same section); that section 82 forbids more than one inspection of the enterprise at the same time, so that where an inspection is being performed by an authority other than the inspection service, the labour inspector must postpone her or his visit and set a new date in agreement with the employer; and that section 83 sets limits for the duration, frequency and scope of inspections (other than for the exceptions cited in the same section).

The Committee recalls that, under *Article 12* of the Convention, labour inspectors provided with proper credentials shall be empowered to enter freely and without prior notice any workplace liable to inspection and need notify the employer of their presence only if they deem that such notification is unlikely to be prejudicial to the performance of their duties. The Committee also points out that under *Article 16*, workplaces have to be inspected as often and as thoroughly as is necessary to ensure the effective application of the legal provisions governing working conditions and the protection of workers. In the Committee's view, the restrictions that the Act on freedom of economic activity imposes on the performance of labour inspection duties are liable to impair freedom of inspectors to inspect workplaces as often as is necessary.

***The Committee therefore asks the Government to make sure that the legislation is re-examined in the light of the objectives of the Convention so as to recognize the right of free access of labour inspectors to workplaces, as prescribed by Article 12, paragraph 1, of the Convention. It trusts that the Government will provide in its next report information on significant progress in this regard.***

## Portugal

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)***

The Committee notes the Government's report for the period ending 31 May 2007 in reply to its previous comments; the annual report on the work of the General Labour Inspectorate for 2006; the report on the application of the Convention; the labour inspection activity plan for the autonomous region of the Azores; and also additional information supplied by the General Labour Inspectorate with regard to the application of the Convention. It also notes that Legislative Decree No. 211/2006 issuing the Organic Act of the Ministry of Labour and Social Solidarity; Regional Legislative Decree No. 19/2006 on the application of the Labour Code and its implementing regulations in the autonomous region of the Azores; and Regulatory Decree No. 2/2007/A issuing the Organic Act of the Regional Secretariat for Education and Science (SREC).

The Committee notes the comments regarding the application of the Convention, attached to the Government's report, originating from the Confederation of Portuguese Industry (CIP), the Confederation of Trade and Services of Portugal (CCP), the Portuguese Confederation of Tourism (CTP), the General Confederation of Portuguese Workers (CGTP-IN) and the General Union of Workers (UGT).

1. *Article 3, paragraph 1(a) and (b), and Articles 17 and 18 of the Convention. Distribution of inspection activities between the objectives of prevention and enforcement.* The employers' organizations (CIP, CTP and CCP) advocate redirection by the labour inspectorate of its activities to place the focus on its preventive role instead of giving priority to prosecuting employers who have committed violations. These organizations call in particular for actions to raise awareness of social values and provide information and advice of a pedagogical nature or for the development of a policy of prevention, education and awareness raising for all players in the labour market, not only for employers and workers.

The opinions of the workers' organizations diverge on this point. The CGTP-IN considers that the emphasis placed on information and pedagogical activities by the labour inspectorate is detrimental to enforcement activities. The result is a climate of impunity which reduces the effectiveness of the labour legislation. In the opinion of the CGTP-IN, the labour inspectorate is exceeding its competence by publishing an interpretation of the provisions of the Labour Code on its web site. Some of these entries, drawn up on the basis of specific cases (an enterprise, activity or branch of activity covered by a collective labour agreement), have no general applicability and may be a source of errors in the evaluation of situations. The UGT considers that the enforcement function should preferably target certain violations, such as those relating to the keeping of registers of temporary employment contracts, bogus self-employment, hours of work, overtime and overtime payments. The UGT also considers that labour inspectors should receive training aimed at improving their understanding of the legislation in the light of its complexity and the gaps it contains.

The Committee notes that, according to the information supplied by the Government, measures have been taken to remedy some of the deficiencies noted by the employers' and workers' organizations, particularly as regards the adaptation of inspection activities to the needs expressed. Accordingly, in consultation with the regional services and the social partners, the General Labour Inspectorate has decided to launch systematic inspection operations targeting the sensitive areas of labour legislation mentioned above and also activities involving a high risk of industrial accidents. The Government also states that the inspectorate is also seeking to develop parallel inspection and advisory activities in the area of conditions of work, as provided for by the Convention. Penalties are imposed on employers in the case of violations which are considered serious or very serious. In this respect, the Committee notes with interest the communication of decisions issued by the courts with regard to employers who are guilty of violations of the legal provisions covered by the Convention and with regard to rest days, atypical work, and employment contracts.

In response to the criticism voiced by the CGTP-IN concerning the risk of misinterpretations of the explanatory notes posted on the web site of the General Labour Inspectorate, the Government emphasizes that, to prevent any error of interpretation, users' attention is always drawn to cases involving an issue that has to be settled pursuant to a collective labour agreement. It considers that the labour inspectorate promotes conditions of work by supplying technical information and advice to employers, workers or their representatives regarding the best way to apply the legislation and by imposing penalties on those guilty of violations. In this respect, the Committee notes with interest, in the annual inspection report for 2006 and the additional information sent subsequently by the labour inspectorate, the statements referring to a significant development of inspection activities and the distribution thereof according to the subject covered. The increase in the number of users of services provided by the inspectorate, whether at the "Citizens' Centres" or inspection offices or on the web site of the General Labour Inspectorate (<http://www.igt.gov.pt>), which has a special section for frequently asked questions, testifies to the growing interest in the services provided.

Finally, the Committee notes with interest that the General Labour Inspectorate publicizes its activities on a broad scale through participation in numerous events such as conferences and seminars, through television programmes and training and educational activities on health and safety undertaken in educational establishments, and through the distribution of books, brochures and leaflets.

***The Committee would be grateful if the Government would send to the Office its assessment of the accuracy of the information posted on the Inspectorate's web site. The Government is also asked to continue supplying information on the measures taken to promote activities of a pedagogical nature while continuing to prosecute in an effective***

*manner, i.e. with a dissuasive effect, those responsible for violations of the legislation concerning conditions of work and the protection of workers.*

2. *Articles 10 and 16. Staff numbers of the labour inspection services and inspection visits.* The Committee notes that the issue of numbers of labour inspectors in relation to the requirements to be covered is raised by both employers' and workers' organizations. Although the CIP welcomes the increase in inspection visits in recent years and appears to attribute the reduction in child labour and industrial accidents to this heightened presence in enterprises, the CTP hopes for an increase in the numbers of labour inspectors and their resources to enable the implementation of a cross-cutting prevention policy and observes that, according to recent data, the national ratio of inspectors to workers is particularly low. The CGTP-IN notices a continuing reduction in the number of serving inspectors in relation to the posts provided for in the budget, pointing out that out of 538 posts provided for, only 200 are actually filled at present, with a consequent decrease in the number of inspection visits. This view is echoed by the UGT, which emphasizes the need to reinforce the staff and the material resources of the labour inspectorate.

The Committee observes that the Government has not supplied the information which it requested in its previous comments concerning the reasons for the continuing decrease in the number of inspectors. However, it notes that 36 inspectors commenced their duties in May 2007 after completing their training and that it is planned to organize a competition to recruit 100 additional inspectors. ***The Committee would be grateful if the Government would continue to keep the Office informed of the measures taken to reinforce the number and qualifications of labour inspection staff.***

3. *Article 5(b). Promoting collaboration between the inspection services and the employers and workers.* With reference to its previous comments, the Committee notes with interest that a national action plan for prevention (PNAP), in the context of the National Council for Occupational Safety and Health (CNHST), has been drawn up pursuant to Resolution No. 104/2004 of the Council of Ministers. This plan contains the following components:

- raising the awareness of employers, workers and occupational health physicians and nurses;
- execution of national, regional and local occupational risk prevention programmes;
- training of the social partners in the field of occupational safety and health;
- improving the statistics of industrial accidents and cases of occupational disease.

The Committee also notes with interest that it is planned, in the context of a plan and a programme on growth and employment (2005–08), drawn up in consultation with the social partners within the Standing Committee for Social Cooperation, to take steps, through social dialogue to improve conditions of work and reconcile the rights of workers with the capacity of enterprises for adaptation. These measures include prevention services in enterprises, in particular reinforcing inspection activities in high-risk areas of work. ***The Committee would be grateful if the Government would keep the Office informed of any developments in this regard.***

The Committee is raising a number of other points in a direct request to the Government.

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1983)***

The Committee notes the Government's report for the period from 1 June 2005 to 31 May 2007, the replies to its previous comments, and the additional information subsequently supplied by the General Labour Inspectorate with regard to the application of the Convention.

It also notes the comments on the application of the Convention from the Confederation of Retail and Services of Portugal (CCP), the General Confederation of Portuguese Workers (CGTP-IN) and the General Union of Workers (UGT), forwarded by the Government with its report. With regard to the points raised by the CGTP-IN, the Committee refers to its observation under Convention No. 81. It also notes that the comments from the UGT relate to the same points as those forwarded by the Government with its report in 2005.

1. *Article 6, paragraph 1(a) and (b), and Articles 22, 23 and 24 of the Convention. Inspection activities in relation to prevention, prosecution and sanction of contraventions.* According to the CCP, the labour inspection situation in agriculture justifies the implementation of an integrated inspection model in which the enforcement of the legislation would be accompanied by the promotion of a culture of prevention. The Committee notices that this view was already expressed in 2005 by the Portuguese Confederation of Tourism (CTP).

The UGT considers that the existence of a large number of small enterprises, especially family enterprises, makes the task of enforcement difficult. Whatever the scale of action on the part of the labour inspectorate, it would still be far from adequate in a sector as specific as agriculture. The union continues to regret the failure to follow up certain initiatives, such as campaigns which did not yield the expected results.

The Committee notes the information supplied by the Government with regard to enforcement and prevention activities on the part of the labour inspectorate in agriculture. In particular, it notes that the General Labour Inspectorate encourages improvements in conditions of work not only by means of technical information or advice which it gives to employers, workers or their representatives regarding the best way to apply the provisions of the legislation or agreements but also by means of reports ordering the adoption of measures within a reasonable period, and investigations made with a view to penalizing contraventions. It also notes that, even though the General Labour Inspectorate implements a culture of

prevention by means of activities of a pedagogical nature, penalties are also imposed on employers guilty of contraventions considered to be serious or very serious. The Committee notes with interest that agriculture constitutes one of the priority sectors of labour inspection activity and that cross-cutting activities are conducted relating to minimum conditions of occupational safety and health, undeclared work, extensions of hours of work, manual transportation of loads, and also in relation to information, consultations and worker participation. The objectives in terms of safety and health is the prevention of occupational risks linked to the use of equipment, pesticides and other chemical substances, the handling of animals, the elimination or storage of residues, the storage of grain and fodder and other agriculture products. Social partners participate in this activity in the context of an agriculture working group mandated to evaluate the results of inspection work. The Government also emphasizes the importance of the implementation of the community occupational health and safety strategy for 2007 replacing the one established for the 2002–06 period. This strategy entails a comprehensive approach to occupational welfare and aims in the long-term to enhance performance in occupational safety and health with the focus on: (a) promotion of the preventive approach; (b) improvements to the legislation; (c) improvements to the practical application of legal provisions; and (d) reinforcement of inspection controls.

The Committee notes that the information contained in the annual report on the work of the General Labour Inspectorate for 2006 on inspection visits in agriculture cover only occupational safety and health. However, even though it has been recognized that agriculture is one of the sectors in which the greatest number of occupational accidents occur, the number of visits to agricultural undertakings targeting safety issues decreased significantly between 2002 and 2006. However, the Committee regrets that the disaggregation of the information supplied by the Government – which also appeared in the annual inspection report for 2006 – does not make it possible to distinguish the inspection activities relating to areas other than occupational safety and health which specifically concern the agricultural sector (inspection of general conditions of work, provision of technical advice and information, reports of contraventions, penalties imposed). ***The Committee requests the Government to ensure that information concerning the enforcement and prevention activities of the labour inspectorate in agriculture appears distinctly in the annual general report on the work of the labour inspectorate. It would be grateful if the Government would continue supplying information on any measure taken or envisaged to strengthen the enforcement and prevention functions of the labour inspectorate in agriculture, especially resulting from community the strategy on occupational safety and health.***

2. *Article 9, paragraph 3, and Article 14. Quantitative and qualitative reinforcement of labour inspection staff in agriculture.* With reference to its observation under Convention No. 81 concerning the increase in the number of inspectors and the progression envisaged in the near future, and training activities for inspectors in 2005 and 2006, the Committee notes that 31 inspectors underwent a six-hour period of training on occupational safety and health in agriculture. ***The Committee would be grateful if the Government would supply further details of the content of this training and also indicate the impact of the quantitative and qualitative reinforcement of inspection staff overall on the functioning of labour inspection in agricultural undertakings. It also requests it to indicate in particular all measures taken to ensure, in conformity with Article 9, paragraph 3 of the Convention, adequate training for inspectors for the performance of their duties in agriculture and further in-service training.***

3. *Article 17. Association of the labour inspectorate in prior controls of workplaces, activities and manufacturing processes and use of new products and substances.* According to the Government, the association of the inspectorate in prior controls takes the form of joint inspections and the issuing of opinions in the context of authorization procedures concerning the installation, modification and functioning of workplaces. ***While noting this information with interest, and the information to the effect that, during the period from 1 June 2006 to 30 May 2007, the General Labour Inspectorate conducted 69 inspection visits in the agricultural sector and issued 14 opinions in favour of the authorization of operations, the Committee would be grateful if the Government would indicate whether these inspections and opinions also concerned the use of new products and substances likely to endanger the health or safety of workers in agricultural undertakings.***

4. *Article 27. Content of the annual inspection report.* ***The Committee hopes that the Government will ensure that the annual inspection report contains specific, distinct information concerning agriculture and that, as announced, an annual report concerning the autonomous regions of the Azores and Madeira will also be published and sent to the ILO.***

## Sao Tome and Principe

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1982)***

The Committee notes the Government's brief report replying to its previous comments.

1. *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.***

2. *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 addressing a direct request to the Government concerning a number of other points.

## Spain

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)**

The Committee notes the Government's detailed report for the period ending on 1 June 2007. It notes with interest Royal Decree No. 1299/2006 approving a new schedule of occupational diseases, and also the implementing regulations for the legislation recently adopted to respond to changes made in modes of production: Order TAS/1/2007 concerning the notification of cases of occupational disease and the resolution on the Labour and Social Security Inspectorate of 11 April 2006, amending employers' records of inspection visits.

The Committee also notes the information supplied in reply to its previous comments and to the comments dated 20 September 2005 from the Trade Union Confederation of Workers' Commissions (CC.OO.) and sent to the Government by the ILO on 20 October 2005.

The CC.OO. made proposals on ways to strengthen the labour inspectorate with a view to improving its functioning. The proposals are based on: (1) cooperation between its services and other institutions; (2) collaboration of the social partners; (3) the number of inspectors and deputy inspectors; (4) the computer resources and systems available to inspectors; (5) the planning of inspection visits; (6) the deterrence of fines; and (7) the content of annual inspection reports.

1. *Article 5(a) of the Convention. Cooperation between the labour inspection services and other institutions.* According to the Government, even though Spain is not a federal State, the autonomous communities have their own competence with regard to the application of labour legislation, especially the performance of inspection visits and the implementation of procedures for the enforcement of penalties imposed by the Labour and Social Security Inspectorate. Act No. 42/1997 establishing the structure and functioning of the labour inspectorate established two mechanisms for collaboration between the general administration of the State and the autonomous communities: the Sectoral Conference for Labour Affairs and the territorial committees of the Labour and Social Security Inspectorate. The first of these bodies is a forum for meetings and deliberations in which the Ministry and some autonomous communities are represented. The central inspection authority presents a report once a year to this forum on the work of the labour inspectorate during the previous year. In this context, it takes note of general and territorial programmes setting objectives, proposals for coordination or integration of territorial plans, resources of the system and the distribution thereof, and any other relevant question. Within the Sectoral Conference, a labour committee constitutes a standing entity for communication, collaboration and information between public administrative bodies on issues relating to labour inspection. The other mechanism for collaboration comprises the territorial committees of the Labour and Social Security Inspectorate. These are bilateral cooperation bodies whose objective is to facilitate the performance of inspection duties in each autonomous community. Their composition, powers and rules of operation are established by means of bilateral agreements between the general administration of the State, on the one hand, and each autonomous community, on the other. Under these agreements, rules may be laid down for technical support and expert collaboration, and for programming and follow-up regarding enforcement of the legal provisions adopted by the communities, the monitoring of which, however, comes under the competence of the labour inspectorate.

Since the criteria on which the CC.OO. bases its assessment regarding the inadequacy of such cooperation are not clear to the Government, the latter points out that the plans for annual objectives are as a rule drawn up on the basis of information available in their respective areas of interest by the Labour and Social Security Inspectorate and other public administrative bodies such as the General Social Security Treasury, the Public Employment Service and the National Social Security Institute. The Committee understands that the CC.OO. would like such cooperation to be extended to analysis of the results of labour inspection activities as they should appear in the annual report on its work, including follow-up to reports of contraventions and information on the implementation of decisions issued in cases referred to the courts. ***The Committee hopes that the Government will invite the CC.OO. to specify the subjects for which it would like to see the inter-institutional cooperation referred to by this Article developed, and in what form, and that it will inform the Office of its position in this respect.***

2. *Article 5(b). Collaboration between the social partners and the inspection services.* The Government states that such collaboration is provided for by section 10 of the Act on the structure and functioning of the labour inspectorate and that a Tripartite Advisory Committee on Labour and Social Security Inspection, established in 2006, is responsible for supplying advice, formulating proposals on strategies for action, priorities and general objectives in the field of labour inspection, inspection campaigns, staff and material resources of the inspection system, procedures for the selection of

inspection staff and their training, etc. *The Committee notes this information with interest and requests the Government to send, if possible, copies of extracts from any reports on the work of the Tripartite Advisory Committee indicating the examination of the subjects covered by the Convention.*

*Referring also to the suggestion made by the CC.OO. to promote further the function of providing information to employers and workers, the Committee requests the Government to indicate any measures taken or contemplated in this regard.*

3. *Articles 9 and 10. Collaboration of technical experts and specialists. Numbers and qualifications of labour inspection staff.* The Committee notes with interest the increase in inspection staff between 2002 and 2006, from 739 inspectors and 806 deputy inspectors to 814 inspectors and 854 deputy inspectors. With reference to its previous comments, the Committee also notes with interest that 137 technical officers from the autonomous communities are collaborating with the labour inspectorate in the area of occupational risk prevention and that their numbers are set to rise. However, it notes that the Government does not reply to the comment made by the CC.OO. regarding the need to update the qualifications of inspection staff, given the increasing complexity and diversity of employment relations, the increase in temporary work, the size of the immigrant workforce, illegal employment, and the high frequency of industrial accidents. As regards the CC.OO.'s suggestion to consider extending to deputy inspectors some of the prerogatives assigned solely to inspectors, the Committee notes that, according to the Government, this matter is still under consideration. *The Committee requests it to supply information on any new measures taken with a view to enhancing the training of labour inspectors in the abovementioned areas and to supply information on any development regarding any additional prerogatives which might be assigned to deputy inspectors.*

4. *Article 11, paragraph 1(a). Labour inspection information system.* The Committee notes with interest the information supplied by the Government in reply to the comments made by the CC.OO. regarding the need to improve the computer systems of the Labour and Social Security Inspectorate. This information is also given on the latter's web site and is mainly concerned with the development, since 2004, of the "Lynx" computer project (*Proyecto Lince*), the purpose of which is to modernize the information systems of the Labour and Social Security Inspectorate, facilitating the work of the staff. Launched in the autonomous community of Aragón, this project is set to be extended to the other 49 labour inspectorates. It is based on a new approach to labour, centralizing information in a portal which is also accessible to other public stakeholders. This system allows the following functions: (1) issue of service orders relating to the planning of inspection visits; (2) collection of information necessary for the performance of visits by inspectors and deputy inspectors; (3) administrative or judicial follow-up to reports of contraventions; and (4) evaluation and exploitation of data. *The Committee would be grateful if the Government would supply a regular evaluation in its subsequent reports of the impact of the implementation of the "Lynx" project on the results achieved by the Labour and Social Security Inspectorate and on the development thereof.*

5. *Article 18. Penalties applicable to contraventions.* According to the CC.OO., the system of penalties is not adequate in that it does not take account of the reality of the labour market. All too often, employers prefer paying fines to taking the necessary steps to put a stop to the contraventions concerned. The Confederation therefore suggests that penalties should be increased for the most serious violations, such as those giving rise to occupational risks, recruitment fraud, undeclared work and gender-based discrimination. It adds that the system of sanctions should be extended to areas where no penalties apply at present. The Committee notes with satisfaction in this respect that major legislative amendments have made it possible to bridge the legal gaps which have been identified, and define new contraventions and penalties. Such legislation includes: Royal Decree No. 689 of 10 June 2005 amending the regulations on the structure and functioning of the Labour and Social Security Inspectorate and the general regulations on the procedures for the imposition of penalties for contraventions of a social nature and in relation to the payment of social security contributions; Act No. 32/2006 of 18 October 2006 on subcontracting in the construction industry and incorporating new contraventions in the Act on contraventions of a social nature and their related penalties; Order TAS/3869/2006 of 20 December 2006 establishing the Tripartite Advisory Committee on Labour and Social Security Inspection (see above); Royal Decree No. 306/2007 revising the amounts of fines provided for by Royal Decree No. 5/2000 and Royal Decree No. 597/2007 on the publication of penalties imposed in cases of serious violations of the legislation on the prevention of occupational risks; Act No. 3/2007 on gender equality; Royal Decree No. 5/2006 for improving growth in employment; Act No. 31/2006 on the participation of workers in public limited companies and European cooperatives; and Act No. 40/2006 concerning the status of Spanish citizens abroad. *The Committee would be grateful if the Government would ensure that information on the practical implementation of these provisions is included on a regular basis in the annual inspection report.*

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)***

The Committee notes the Government's detailed report for the period ending on 1 June 2007. It also notes the Government's replies to the comments of the Trade Union Confederation of Workers' Commissions (CC.OO.), received by the ILO on 20 September 2005 and forwarded to the Government on 20 October 2005.

The Committee refers to its observation on Convention No. 81 in relation to the views expressed by the CC.OO. concerning the operation of the labour inspectorate, with particular reference to: cooperation between the inspection

services and other institutions (*Article 12 of the Convention*); collaboration with the social partners (*Article 13*); inspection staff and adaptation of the qualifications of labour inspection personnel (*Articles 14 and 9*); computer equipment and systems available to inspectors; programming of inspections (*Article 21*); dissuasive effect of financial penalties (*Article 24*); and content of annual inspection reports (*Article 27*).

*Articles 26 and 27.* The Committee notes with satisfaction, in the annual inspection report on all the sectors covered, the separate presentation of information on the activities carried out in agricultural undertakings and their results, and on the number and gravity of occupational accidents and occupational diseases inherent to the branch. ***Noting with interest that statistics of cases of occupational diseases are also compiled and presented in a table in an annex to the report, it strongly encourages the Government to ensure that this important information is also included in the annual report.*** The Committee recalls that the progressive achievement of the objectives assigned to the labour inspectorate is largely conditional on the regular preparation of an assessment that is as exhaustive as possible, for each of the sectors covered, of the general conditions of work and specific occupational safety and health conditions.

The Committee is addressing a request directly to the Government on other matters.

## Sri Lanka

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1956)***

The Committee takes note of the report sent on 3 October 2007 in reply to its comments of 2006 on the matters raised by the World Confederation of Labour (WCL, now ITUC – International Trade Union Confederation) in September 2005. It also notes the publication “Sri Lanka Future Directions” for the Ministry of Labour Relations and Foreign Employment, produced in collaboration with the ILO. The Committee notes that its observation of 2006 was discussed at the Conference Committee on the Application of Standards (ILC, 96th Session, June 2007), the conclusions of which read as follows:

The Committee took note of the statement made by the Government representative as well as the discussion that took place thereafter. It noted the observation made by the Committee of Experts concerning the lack of information about labour inspection staff in terms of numbers and qualifications; the infrequency of inspection visits; and the character of sanctions; the lack of information about transport facilities and means; the administrative and legislative obstacles hindering the freedom of inspectors to enter establishments; the lack of information about powers of labour inspectors; and the need to publish an annual inspection report containing the statistics required under the Convention. The Committee noted the detailed information provided by the Government representative on the restructuring of the labour inspection system, with ILO assistance, the efforts to develop the prevention side of labour inspection aimed at promoting the qualifications of labour inspection staff, and at increasing the number of female and male labour inspectors. While noting the declaration made by the Government on the absence of any restriction on the right of access by inspectors to establishments in export processing zones, and its confirmation that the system of administration was decentralized to allow better supervision of its operation, the Committee requested the Government to communicate to the ILO precise and detailed information on the relevant legal provisions, and of their practical application. It further requested the Government to communicate to the ILO a copy of the provisions providing for the doubling of the allocation of professional travel expenses of labour inspectors, and to explain the reimbursement procedure of expenses claimed by inspectors. The Committee requested that the Government ensure that the legislation is modified so as to give full effect to the provisions of article 13 relating to the powers of injunction, and to communicate to the ILO information on progress achieved to that end, and provide a copy of any relevant draft text or final text. The Committee also requested the Government to ensure the publication of an annual inspection report containing all legislative and practical information required under Article 21 of the Convention, and its communication to the ILO within the deadline provided for in Article 20. It expressed its hope that detailed information on inspection activities on child labour would also be included in such a report. It requested the Government to submit a full report to the Committee of Experts for its next session this year.

The Committee also notes the communication of 31 May 2007 from the Lanka Jathika Estate Workers Union on the application of the Convention, and the joint communication from the Confederation of Public Service Independent Trade Unions (COPSITU), the Government Service Labour Officers’ Association (GSLOA), the United Federation of Labour, the Progress Union, the Free Trade Zone Workers Union and the Health Service Trade Union Alliance, dated 4 October 2007 and concerning the Conference Committee’s discussion. The Office forwarded the communications to the Government on 16 August and 7 November 2007 respectively. The Committee notes that despite a request from the ILO on 18 October 2007, the Government has not sent the observations from the Lanka Jathika Estate Workers Union which it said were appended to its report.

***Since the Government’s report arrived too late to be examined at the present session, the Committee would be grateful if the Government would in due course submit for examination at the next session the observation from the Lanka Jathika Estate Workers Union, referred to by the Government, and any comments and additional information it deems appropriate in response to the abovementioned conclusions of the Conference Committee on the Application of Standards and the comments by the abovementioned trade unions.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Sudan

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1970)**

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

1. *Institutional and legislative reform.* The Committee notes the conclusion of a global peace accord in January 2005, the adoption of a provisional Constitution and the establishment of a Government of national unity. It notes with interest that an in-depth revision is envisaged in this context of the structures of public services, including the labour inspectorate, and of the texts governing their operation, including the status of inspectors, with a view to increasing their motivation for the discharge of their functions. The Committee also notes with interest the establishment of a Federal Labour Statistics and Information Centre for the compilation and publication of regular reports, including a report on labour inspection. **Further noting that it is planned to introduce relevant amendments in the Labour Code, the Committee remains attentive in relation to current developments and requests the Government to provide information on any institutional and legislative progress achieved in relation to the establishment and implementation of a system of labour inspection that is in conformity with the provisions of the Convention.**

2. *Strengthening of decentralized structures.* The Committee notes with interest the announcement by the Government of the reinforcement in the near future of the human and material resources of existing labour offices and the establishment, in the south of the country and in other regions affected by the civil war, of labour offices with the necessary personnel and equipment to discharge their functions. **The Government is requested to provide information on the progress achieved in relation to this project and to supply in future reports an updated list of the regional and local labour inspection structures in labour offices, as well as information on their means of action.**

3. *Child labour.* Noting that a request for technical assistance was made to ILO/IPEC in 2004 with a view to the preparation of a full study on child labour and the organization of training workshops for the labour inspectors concerned, the Committee awaits information on the action taken as a result, when the conditions so permit. **It would be grateful if the Government would keep the ILO informed of any new measures adopted for this purpose, and the results achieved.**

4. The Committee also notes the indication of an urgent need for technical and logistical assistance expressed by the service responsible for work by women and children in the Ministry of Labour, with a view to the extension of its activities to regional and local labour offices. **The Committee hopes that measures will be taken rapidly by the Government to seek the necessary resources for the provision of the required assistance in the context of international cooperation, where necessary with the technical support of the ILO. It requests the Government to provide information on any progress achieved in this respect, and on any difficulties encountered.**

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

## Suriname

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)**

The Committee takes note of the Government's report containing replies to its previous comments.

1. *Article 7 of the Convention. Training of labour inspectors.* The Committee notes with interest the information on the various training courses attended by labour inspectors during the period covered by the report in the context of bilateral cooperation and with ILO support, including courses on child labour, the planning, preparation and conducting of visits and follow-up thereto, industrial relations, and reporting on inspection visits. **The Committee hopes that the Government will continue to provide information on any new training activities for the purpose of improving inspectors' skills and that it will also be able to report on the impact of retraining on the working and results of the labour inspection services.**

2. *Article 14. Notification to the labour inspectorate of cases of occupational disease.* For many years the Committee has been drawing the Government's attention to the need to ensure that full effect is given to this Article of the Convention, specifically as regards occupational diseases. The Government states that there have been no changes in the law with regard to application of the Convention, but that in view of the crucial role of labour administration in administering and enforcing labour laws, the labour inspection legislation is to be reviewed in order to bring it more into line with the provisions of the Convention. The Committee draws the Government's attention in this connection to its General Survey of 2006 on labour inspection (paragraph 118), in which it emphasized that it is vital, for preventive purposes, for formal mechanisms to be put in place to provide the labour inspection services with the data they need to identify high-risk activities and the most vulnerable categories of workers. **The Government is therefore asked to take advantage of the planned legislative revision in order to adopt provisions that supplement the national legislation, in accordance with this Article of the Convention, by defining the instances and the manner in which the labour inspectorate must be informed not only of occupational accidents, but also of cases of occupational disease. The Committee would be grateful if the Government would keep the Office informed of any progress in this respect and provide copies of any draft provisions or any adopted texts, together with all relevant documents (administrative orders, circulars, declaration forms, etc.).**

3. *Article 15(b). Scope of the obligation on labour inspectors to maintain professional secrecy.* **The Committee trusts that the Government will also take advantage of the revision which it announced, to give effect to this provision, as it undertook to do, by ensuring that a provision is adopted to extend the scope of the obligation on labour inspectors**

*to observe professional secrecy in order to ensure that they continue to be bound by this obligation after they have left the service.*

The Committee is addressing a request on other matters directly to the Government.

## Swaziland

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1981)**

1. *Article 3, paragraphs 1 and 2, of the Convention. Review of the functions of the labour inspectorate.* Further to its previous and repeated comments to the effect that in settling disputes labour inspectors assume a burden that is detrimental to the performance of their primary duties set out in *Article 3, paragraph 1*, the Committee notes with satisfaction that following the 2005 amendment to the Industrial Relations Act (No. 1 of 2000) (particularly sections 76, 77 and 78), labour disputes are now referred directly to the Conciliation, Mediation and Arbitration Commission, and not to the Commissioner of Labour or any person authorized to act on his behalf.

2. *Articles 20 and 21. Annual labour inspection report.* The Committee also notes with interest that the annual report of the Department of Labour for 2005 contains detailed information and statistics on the work of the inspection services and on their resources and their constraints in the light of their needs. This information is a valuable tool for evaluating the functioning and the results of the inspection services and an essential basis on which to determine appropriate budgetary funding for the future.

The Committee is addressing a request on other matters directly to the Government.

## Sweden

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)**

1. *Progress achieved during the period covered by the Government's report.* The Committee notes with interest the information provided by the Government concerning the developments that have occurred in the organization and operation of the labour inspection system, including: (i) the development of a computerized application through which a form can be downloaded by employers for the declaration of employment accidents and other incidents; and (ii) the determination of a method for the mapping of workplaces where work environment hazards may be suspected, thereby allowing the Work Environment Authority to evaluate all the workplaces registered in this respect.

2. *Article 7 of the Convention. Training of the staff of the labour inspection services.* The Committee notes with satisfaction that the in-house training provided by the Work Environment Authority, which was previously limited to inspection personnel only, now includes basic training for all associates concerned with the handling of supervision procedures. After the basic training, associates undergo supplementary training according to the competence required for their respective duties. The Committee does not doubt that such a measure will contribute to achieving a significant improvement in the operation of the labour inspectorate as it will enable the various categories of personnel concerned to adopt a more relevant approach to their own duties in relation to the objectives of labour inspection and the principles to be followed by inspection personnel, particularly those relating to professional rules and ethics.

## United Republic of Tanzania

### Tanganyika

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

1. *Articles 1 and 3 of the Convention. Labour inspection system.* The Committee notes with interest 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 with interest 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 addressing a request on other matters directly to the Government.

## Uganda

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)***

The Committee notes the Government’s reply to its observation made in 2004 and repeated in 2005 concerning the process of dismantling the labour inspection system and the need to take measures to establish a system that is in conformity with the Convention. The Government indicates that it has duly noted the comments of the Committee of Experts but adds that the Committee for the Revision of the Constitution has been unable to reverse the decentralization process, contrary to previous announcements. However, the Government says that it is aware of the requirement imposed by the Convention to place the labour inspection system under the control of a central authority pursuant to *Article 4 of the Convention* and undertakes to keep the ILO informed of all developments in this respect and to send copies of any relevant legislative, regulatory or administrative texts. While recognizing that the decentralization policy has had a negative impact on the labour inspection system, the Government considers that this is particularly because the district authorities are unaware of the role of labour inspection in the production process that they have not given suitable priority to labour services in general. While noting the Government’s statements, the Committee recalls that the question of the deterioration of the functioning of the labour inspection has been the subject of its observations for many years and was raised in discussions within the Committee of the International Labour Conference at its June 2001 and June 2003 sessions.

1. *Dismantling of the labour inspectorate owing to the decentralization of labour administration functions.* During the discussion in June 2003, the Conference Committee noted that the Government had not supplied the requested information to the Committee of Experts. It reminded it of the commitment made before it in June 2001 to examine all aspects of the labour inspection situation with all the partners concerned, if necessary having recourse to technical assistance, and also its commitment to review the decentralization measures. In addition, the Conference Committee also expressed again the hope that the Government would quickly send the Committee of Experts the requested information and the details showing that its legal and practical obligations had been implemented, in particular with the assistance of the employers’ and workers’ organizations, by means of administrative and financial measures which were essential for the implementation of labour inspection services in conformity with the Convention.

During its November–December 2003 session, the Committee of Experts was bound to note once again that the Government had not sent any report relating to the Convention and to send it a new observation, in which it reiterated its deep concerns and called on the Government to take the necessary measures as soon as possible, with the required technical assistance.

After examination of the Government’s report covering the period ending in May 2003, but sent to the ILO in June 2004, the Committee essentially pointed out, in an observation which it sent to the Government in 2005, that the labour inspection system, the performance of which had been badly affected by an unfavourable economic situation before the start of the decentralization process, continued to deteriorate owing to the persistence of the economic stagnation, on the one hand, and to the manner in which decentralization of the labour administration was being implemented, on the other. Moreover, the existing legal framework governing the powers, organization and working of the labour inspectorate, still based on the principle of the existence of a central supervisory authority and monitoring of the inspection system, was no longer applicable either in law or in practice, since the process of decentralizing competence to the heads of district was accompanied by withdrawal of the central government in relation to the use of budgetary resources by the districts. The Committee referred to its previous comments and also to the discussions within the Conference Committee at the 2001 and 2003 sessions of the International Labour Conference and also noted the information describing an in-depth reform of its institutions appearing ultimately to aim at decentralizing most state functions. However, as the Government itself observed, decentralization did not comply with *Article 4* of the Convention, which calls for supervision and control of the labour inspection system by a central authority.

The information supplied by the Government shows that the very notion of a central labour inspection authority has become devoid of all substance. The little authority that the minister retains in law cannot be exercised for want of the necessary structure and resources, and some heads of districts take the attitude that to maintain or establish local labour inspection services serves little purpose. An ILO mission carried out from 9 to 13 May 2005 revealed that there were a

total of 26 labour inspectors for all 56 districts, and that assistance to the labour services from all donors was low in the light of labour inspection needs, particularly with regard to training relating to the gathering of information and the drafting of reports.

The ILO mission was informed that, in order to reconsider the decentralization of the labour inspectorate, revision of the Constitution was necessary. However, the labour inspection function has not been mentioned explicitly as one of the functions calling for relevant measures in the White Paper drawn up to this end.

Since such developments are particularly worrying in terms of the Convention's social and economic objectives, the Committee called on the Government, in an observation sent to it in 2004 and repeated in 2005, to reconsider, if not the principle of a decentralized labour inspectorate which now appears firmly to be a part of the overall national project, at least the methods and means of implementing decentralization. The Committee reiterated that the Government would be bound to observe the principle of placing the labour inspection system under a central authority, pursuant to *Article 4* of the Convention taken as a whole, since restructuring in Uganda seemed to be moving towards a kind of "federalism", in which the districts are like the "federated units" referred to in *paragraph 2* of this Article. It also emphasized that the obligations laid down under article 22 of the ILO Constitution that the Government assumed on ratifying the Convention must in any event remain the responsibility of the State. It is the duty of the State to ensure that the conditions needed to apply the Convention exist nationwide. National laws must ensure that competence for labour inspection is shared between the central bodies of the labour administration and the decentralized authorities, and there must be uniform legislation governing the status, conditions of service and training of inspection staff (*Articles 6 and 7*). Furthermore, there must be scrupulous observance of the need to ensure the establishment either of a labour inspection system in each district or, possibly, of a system in which competence is determined on a broader regional basis, if such an option is deemed better suited to the more rational use of available resources. In any event, resources must be assigned on a legal basis to the labour inspection in order to make available to labour inspection services the staff, material and logistical resources needed to perform their duties (*Articles 6, 7, 9, 10 and 11*).

2. *Establishment of an inspection system suited to economic and social needs: Urgent preliminary measures.* As already observed by the Committee, the fact that it has been impossible for many years to produce an annual report on the work of the inspection services (*Articles 20 and 21*) not only reflects the extent to which the inspection system has been dismantled but, even more regrettably, prevents any assessment of needs either at the national or regional level. As a result, it is impossible to determine any priorities for action and evaluate the resources needed. The Committee notes in this respect that the Government has not sent the report which, according to the Government, deals with the inspections carried out, without stating the period or geographical area covered.

In its previous comments, the Committee stressed the need to study and anticipate on a tripartite basis the effects of globalization on working conditions and workers' rights in order to secure the social partners' attachment to the principle that an effective labour inspection service needs to be established in the twofold interest of social protection and improved productivity. Referring to the technical assistance provided by ILO under the Strengthening Labour Relations in East Africa (SLAREA) project to raise the Government's awareness of the importance of the tripartite dimension of labour administration, the Committee hoped that measures would be taken in this area, particularly in the context of the application of this Convention. However, it observes that the Government gives no indication that progress has been made in this direction.

*The Committee is therefore bound to urge the Government, in the light of the above, to adopt as soon as possible all measures that are essential for the establishment and functioning of an inspection system which conforms to the requirements of the Convention, including in particular seeking the necessary funds and technical assistance, keeping the ILO informed and sending copies of the relevant legislative, regulatory and administrative texts. It also requests the Government to supply the information required by the Convention report form, to send its report to employers' and workers' organizations in accordance with article 23, paragraph 2, of the ILO Constitution and to keep the ILO duly informed.*

## Uruguay

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)**

The Committee notes the Government's report, the annual general and social security inspection report for 2006, and the other documents attached thereto, including the copies of recently adopted legislation. The Committee notes the comments dated 27 October 2006 of the Latin American Confederation of Labour Inspectors (CIIT), which were forwarded to the Government on 28 November 2006, and the comments of the Inter-Union Assembly of Workers–National Convention of Workers (PIT–CNT), sent to the ILO by the Government. The Committee notes that the comments of the CIIT and the PIT–CNT refer mainly to issues which it has been addressing for a number of years.

1. *Article 6 of the Convention. Withdrawing the possibility for labour inspectors to hold multiple jobs.* In its past comments, the PIT–CNT emphasized that labour inspectors exercising a parallel professional activity in the private sector are subject to such constraints that it is impossible for them to update their skills to the level necessary for the discharge of inspection functions. The Government subsequently introduced a procedure by which labour inspectors are required to declare, under oath, their second employment, a measure which the Committee considered inadequate with regard to the

requirements of the Convention. The Government's attention was once again drawn to the importance of reconsidering the matter in view of the credibility and probity required for the exercise of labour inspection functions. The principle of prohibiting inspectors from having a relationship of dependence in respect of legal or natural persons subject to the supervision of the offices in which they are employed is set forth in section 27 of Decree No. 30 of 23 January 2003. This measure, which in some ways represented a step forward, still gave inspectors considerable latitude to dedicate time and energy to parallel activities in order to supplement their incomes.

Having acknowledged in its previous report that parallel employment seriously undermines the energy necessary for the discharge of inspection functions, the Government finally announced budgetary measures to improve the remuneration of labour inspectors so that they would not have to seek other sources of income to support their families. The Committee notes with satisfaction that the Government has followed up on its commitment, since the information it has provided, together with the new legal provisions, show that the staff of the labour inspectorate are now public servants in their own right. Pursuant to sections 240 and 241 of Finance Act No. 18.172 for 2006, labour inspectors who opt for the principle of exclusivity are employed on an exclusive basis, eight hours a day, within the labour inspectorate, and may not exercise any other activity, whilst those who do not opt for this principle may, subject to the authorization of a higher authority, exercise parallel activities only in the form of cultural, sporting, family or other activities which do not interfere in any way with inspection duties. The CIIT considers, however, that the absence of a measure regulating the principle of exclusivity constitutes a violation of *Article 15* of the Convention. The Government, for its part, seems to consider the raising of the wages of inspectors who have opted for the principle of exclusivity to be an encouragement for other inspectors to also choose this option. The Government points out that the increased wages take effect on the date of submission to the principle and that the retroactive payment of these wages will be effected once the corresponding budget is released by the Ministry of the Economy.

***The Committee would be grateful if the Government would indicate whether the principles set forth in sections 240 and 241 of abovementioned Act No. 18.172 are of a permanent nature, and would provide information, including any relevant documents, on the measures taken for their application, in particular with regard to section 241, to ensure that the authorization to exercise a parallel activity such as those provided for under section 241 of Act No. 18.172 establishes the period, duration in hours and nature of the activity so that the labour inspectors concerned are not hindered in the exercise of their inspection duties.***

*Wage discrimination.* The issue of the disparity between the wages of tax inspectors and labour inspectors, raised previously by the PIT-CNT, has once again been referred to by the CIIT, which states that this disparity also exists in respect of inspectors belonging to other bodies of the administration, as well as within the labour inspectorate itself between inspectors employed in identical posts and carrying out the same duties. The Committee notes that the information sent by the Government in this respect concerns only the case of labour inspectors recruited following the dissolution of a former air transport enterprise, PLUNA, who are not included in the labour inspection budget, but whose wages are higher than those of their labour inspection colleagues. Stating that the only labour officials who have benefited from a pay rise during the period covered by the report are labour inspectors, the Government considers that this increase, together with the application of the principle of exclusivity already mentioned, should reduce the current disparities.

*Other discrimination against labour inspectors affiliated to a trade union organization.* According to the CIIT, the distribution of competencies and responsibilities between the inspectors is arbitrary and does not take into account professional merits. The organization makes particular mention of acts of persecution against inspectors affiliated to a trade union organization, involving transfers, unjustified changes in working hours and the assigning of inspectors to purely administrative tasks. Promotions are granted only to non-affiliated inspectors who are given investigative powers in respect of the activities of their colleagues and the power to interfere in the affairs of the organization. The Committee notes that the Government did not consider it useful to communicate its opinion on these matters. ***It would be grateful if the Government would provide any comments that may be considered appropriate on the above allegations and any relevant documents.***

2. *Article 7. Training of labour inspectors.* The CIIT considers it desirable to require that specific training is given to candidates for labour inspector positions. It regrets that labour inspectors do not receive appropriate training for the exercise of their duties and laments the inexistence of a permanent training authority and the fact that no training activities have been provided for labour inspectors by the current administration.

The Government, for its part, states that upon entering into service, labour inspectors receive basic training on the areas which will form part of their work (general conditions of work, health and safety) and that training activities are also organized periodically to update their skills. Moreover, courses have been organized within the framework of Spanish and ILO cooperation on occupational safety, hygiene at work, safety in the construction industry and risk prevention in forests. A further course on chemical substances, which will be taught by an expert from the abovementioned cooperation, is currently being prepared. Other training activities on the inspection process and fiscal reform have also been held.

3. *Article 10. Number of labour inspectors.* The PIT-CNT and the CIIT continue to consider the number of labour inspectors insufficient. For the CIIT, the number is insufficient in relation to the size of the active population and the number of establishments to be covered, the volume and complexity of the legislation to be enforced and the additional duties conferred upon inspection staff. According to this organization, the number of inspectors is established in accordance with budgetary restrictions and the ranking given by the public authorities to other priorities and not on the

basis of the criteria set forth in *Article 10*. Moreover, inspectors are distributed unequally between the capital (80 per cent) and the rest of the country and between the Work Environment Conditions Division and the General Conditions of Work Division. The lack of lawyers within the Legal Division and the shortage of administrative staff are the reasons for the slowness of inspection procedures and thus affect the credibility of the institution.

In reply to these allegations, the Government states that the staff of the labour inspectorate includes 142 inspectors, divided into three teams (one operating in Montevideo, the other in the interior of the country and the third in the ports), that three new inspectors have been recruited to the General Conditions of Work Division and that steps have been taken to recruit 33 occupational health and safety inspectors for the Work Environment Conditions Division. It also states that three lawyers have joined the staff of the labour inspectorate and that seven others will soon take up their duties. ***The Committee would be grateful if the Government would continue providing updated information on the situation of labour inspection staff and their distribution in geographical terms and by field of competence.***

4. *Article 10(a)(i) and (ii), and Articles 11 and 16. Material working conditions of labour inspectors and inspection visits.* The CIIT once again regrets that the functioning of the labour inspectorate is impeded by a lack of basic materials, equipment, furniture, computer facilities, and means of transport suitable for the performance of inspection duties in rural areas. Moreover, inspectors do not have any form of occupational manual to guide them, which means that the methods used for inspection visits vary widely. This situation is further aggravated by the absence of any inspection policy prioritizing the activities characterized by a high level of occupational accidents and cases of occupational disease. According to the organization, the frequency of inspection visits is significantly higher in establishments located in the capital than in other parts of the country. Furthermore, establishments in industries in which there is no trade union representation often go uninspected, since the labour inspectorate reacts mainly to complaints that it receives and situations which are the focus of media attention.

With regard to the material working conditions of labour inspectors, the Government states that the offices in Montevideo have vehicles and travel allowances at their disposal to travel around in the interior of the country and that tenders have been invited for the acquisition of four-wheel drive vehicles. The Government also states that computer equipment has improved. Offices are equipped with the apparatus needed for inspectors to measure contamination in the workplace, first-aid kits, digital cameras, and communication equipment, including mobile telephones. Personal protection items such as gloves, masks, helmets, ear protectors are also provided to inspectors for use when carrying out their duties.

With regard to inspection visits, the Committee notes with interest Decree No. 108/007 under which any individual or entity employing staff is required to keep and register with the General Labour Inspectorate or its regional offices a list of the staff employed, together with a logbook containing the results of inspection visits and information on occupational accidents. ***Noting the Government's statement to the effect that the General Labour and Social Security Inspectorate is to undergo restructuring with a view to improving the quality of inspection visits, the Committee hopes that the implementation of the above Decree will enable the inspection services to identify establishments liable to inspection and to establish visiting schedules taking into account priority sectors particularly in respect of occupational safety and health issues. The Committee would be grateful if the Government would continue providing information on developments in the working conditions of inspectors and on the nature of the structural changes planned for the General Labour Inspectorate. The Committee also asks the Government to provide information on the implementation of Decree No. 108/007 and its impact on the way in which the labour inspection services operate and on the scheduling and quality of inspection visits.***

5. *Article 5(a). Cooperation within the inspection services and between the inspection services and other public bodies.* According to the CIIT, the functioning of the inspection services suffers from a lack of coordination between the various divisions and the working groups of the General Labour Inspectorate, with this lack of coordination being particularly marked in regions far from the capital. While recognizing the efforts made by the Government to promote collaboration between the various inspection service structures, the organization feels that the impact of the measures taken on the efficacy of the functioning of the inspection services is limited due to the lack of resources and the strongly centralized nature of the system. Moreover, it condemns the lack of cooperation between the inspection services and other public bodies, particularly those engaged in technical and scientific investigations, and states that it is unaware of any coordination between the inspection services and other state institutions or bodies engaged in activities relating to labour inspection. It regrets that information on the results of inspection service activities, in particular the follow-up given to investigations concerning occupational accidents, is not systematically communicated to the labour inspectorate. The Committee notes with interest that this will no longer be the case, thanks to the preparation of an annual report containing relevant information (see under *Article 18*).

As regards the coordination of inspection services, the Government indicates that the labour offices in the interior of the country are in contact with the General Labour and Social Security Inspectorate through the National Directorate for Coordination of the Interior (DINACOIN) of the Ministry of Labour and Social Security.

Without responding to the concern regarding the absence of cooperation with other public bodies mentioned by the organization, the Government refers to various other forms of cooperation such as the conclusion of agreements between the General Labour Inspectorate and (i) the State Insurance Bank, dated 17 November 2006, on the exchange of information relating to occupational accidents and diseases; and (ii) the Ministry of the Interior, which is responsible for the technical police, so that the latter systematically notify the inspection services of serious and fatal accidents which

have required their intervention. It also states that the General Labour Inspectorate has provided members of the technical police with training on the need to preserve evidence at the scene of the accident until the arrival of the inspectors.

6. *Article 14. Notifying the labour inspectorate of industrial accidents and cases of occupational disease.* According to the CIIT, the application of the procedure of notifying the labour inspectorate does not allow for the establishment of reliable statistics in this regard. It also states that the labour inspectorate does not monitor the application of this procedure and that no penalties are therefore imposed for failing to apply it. The Committee notes with satisfaction that notification methods and deadlines are now governed by Annex 1, Group B 1 of Decree No. 64/004 issuing the new National Code on Notifiable Diseases and Health Situations, and section 1, paragraph 1, of Regulatory Decree No. 169/004 extending the compulsory notification of occupational accidents and diseases. During the period covered by the annual inspection report, 17,237 occupational accidents were notified, 78 of which were investigated. The Government indicates that a report on investigated accidents was to have been prepared by the end of 2006. ***The Committee hopes that regulatory and administrative measures (especially instructions and circulars) will be taken to ensure that effect is quickly given to the abovementioned Decrees throughout the territory. It asks the Government to keep the Office informed and to communicate any relevant documents together with a copy of the report on the accidents that have been investigated.***

7. *Article 18. Effective enforcement of adequate penalties.* From the point of view of the CIIT, the penalties imposed for violations are neither adequate nor dissuasive. In general, it is less costly for enterprises to pay off fines than to put an end to the violations, in particular on temporary construction sites. In practice, only a small percentage of the fines imposed are received by the administration, following a lengthy procedure.

In this respect, the Committee notes with interest that under Act No. 15.903 and Decree No. 186/004, the amounts of the penalties have increased substantially and that, thanks to the registering of enterprises that have committed violations, provided for by Act No. 17930/2005, supplemented by Decree No. 263/006, it is now possible to increase financial penalties, notably for repeated offences.

The Committee notes with satisfaction that a register of enterprises that have committed violations, containing information on the reported violations, the rules violated and the penalties imposed will be made available to each inspection service.

The Committee is addressing a direct request to the Government concerning a number of other points.

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1973)***

The Committee takes note of the Government's report, the additional information sent subsequently, the annual report of the General and Social Security Inspectorate for 2006, and Decree No. 108/007. It also notes that on 3 September 2007 the Government communicated observations made by the Inter-Union Assembly of Workers – National Convention of Workers (PIT-CNT) on the application of the Convention.

1. *Articles 14, 15, 17, 18, 19, paragraph 2, and 21 of the Convention. Need to increase the strength of the inspectorate staff and improve its qualifications, and to provide it with adequate resources and transport facilities.* The Committee notes that the observations by the PIT-CNT largely reiterate the comments it made in 2005. According to the PIT-CNT, although there have recently been some developments for the improvement of human and material resources, in the agricultural sector supervision is still insufficient in safety and health, and the sector as a whole is characterized by widespread non-observance of the labour legislation and a high rate of occupational accidents. The PIT-CNT stresses the need to provide the inspection services in agriculture with more staff, particularly specialists in safety and health, and adequate transport facilities for inspectors to travel to areas that are difficult to reach. In the Committee's view, the PIT-CNT's observations are justified, particularly as regards the specific risks to which agricultural work exposes not only workers and members of their families living at the workplace, but also the environment and neighbouring communities. ***Consequently, the Committee refers the Government to its comments under Convention No. 81 on the development of human resources and the condition of work of the labour inspectors, and would be grateful if the Government would provide information on the effects of such development on the volume and quality of inspection work in agricultural undertakings, particularly in the area of occupational safety and health.***

2. *Articles 12 and 27(c), (f) and (g). Cooperation between the inspection services and other government bodies.* Further to its comments under Convention No. 81, the Committee takes note of Decree No. 108/007 requiring all employers to keep and register a number of documents that are of use in the inspectorate's follow up of undertakings. ***It asks the Government to provide information on any measures taken to apply the Decree to agricultural undertakings and on any difficulties encountered.***

***It would also be grateful if the Government would report on the progress made in the setting up of a single window common to the tax, social security and labour inspection authorities for the registration and monitoring of undertakings, and on the impact of these developments on the agricultural sector in terms of the requirements of the Convention.***

***Noting the Government's statement that the "Chameleon" project, under which any enterprises failing to comply with statutory wages will be identified, and that this will trigger the labour inspectorate's supervisory machinery, the***

*Committee would be grateful if the Government would provide informations on any developments in this respect, especially as concerns the project's objectives in relation to the working of the labour inspection services in agriculture.*

The Committee is addressing a request on other matters directly to the Government.

## **Bolivarian Republic of Venezuela**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)**

The Committee takes note of the Government's report for the period ending on 1 September 2007 which replies to its previous comments, and of the documents appended thereto.

*Article 6 of the Convention. Stability of employment of labour inspectors and their independence of changes of government.* The Committee notes with satisfaction, that following its previous comments, it is now clear that labour inspectors are governed mainly by the Act of 2002 issuing the public service regulations, section 19(2) of which defines them as career officials appointed by competition to permanent posts. The Government indicates that Presidential Decree No. 1367 of 12 June 1996, under which labour inspectors were subject to discretionary termination, has been tacitly repealed because its provisions were contrary to the new Constitution, adopted in 1999. The legislation is thus consistent with the provision of *Article 6* of the Convention which requires 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 ...".

The Committee is addressing a request on other matters directly to the Government.

## **Zimbabwe**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1993)**

The Committee notes the Government's report received in August 2007 and the appended legislation.

In its previous comments, the Committee referred to recommendations made by the Zimbabwe Congress of Trade Unions (ZCTU) for the effective operation of the labour inspectorate, which included measures to ensure that: competent staff are retained and more staff recruited; working conditions are improved; the provision of resources such as vehicles and office supplies to labour inspectors is given priority; and penalties for non-compliance with the labour legislation continue to act as a deterrent. It noted the Government's statement that there had been significant progress towards ensuring effective and efficient inspections through the development of an integrated inspectorate. The Government stated that it hoped that with the support of the social partners, the challenges would be overcome.

The Committee notes that in its report on Convention No. 129, the Government has supplied information in response to the above organization's concerns.

1. *Articles 6 and 10 of the Convention. Staff and conditions of service of labour inspectors.* According to the Government, recruitment measures have been implemented to fill vacant posts in the inspectorate in order to provide sufficient staff in the ten regions. While providing information about the measures to keep experienced staff in the inspectorate (wage increases, transport subsidies, construction of housing), the Government nevertheless states that the fact that labour inspectors have left their posts in order to take up employment in the private sector has helped to improve application of the legal provisions in the enterprises where they take up work. The Government also supplies statistics on the visits to economic sectors as a whole, which do not allow an assessment of coverage in terms of needs. The Committee hopes that the measures announced by the Government will strengthen the staff of the inspectorate and substantially consolidate their conditions of service so as to ensure that the legal provisions on working conditions and the protection of workers are applied not only in the private enterprises employing former inspectors, but also, in accordance with the Convention, in all workplaces subject to labour inspection. ***The Government is asked to continue to provide information on the composition and distribution of inspectorate staff responsible for general conditions of work and occupational safety and health, and on the improvement of inspectors' conditions of service.***

2. *Article 11. Material facilities for inspection staff.* The Government states that, contrary to the assertions of the trade union, inspectors do not use public transport to carry out inspection visits, and that despite the meagre resources available, each service has at least one vehicle for use by inspectors, while those responsible for supervising occupational safety and health have adequate transport to perform their duties. ***The Government is asked to provide details of the manner in which effect is given to each provision of the abovementioned Article of the Convention, specifying in particular the procedure for refunding labour inspectors' duty travel costs. Please provide copies of the relevant texts.***

3. *Article 18. Suitable and effectively applied sanctions.* The Committee refers to its previous comments, and notes with interest that in order to take account of monetary inflation, the levels of the units used as a reference for establishing penal sanctions have again been adjusted under Statutory Instrument 134 of 2007 of the Criminal Law Notice, 2007, repealing and replacing the first Standard Scale of Fines established by sections 2 and 280 of the Criminal Law Code. ***Noting that violations of the fundamental rights of employees are also punishable by imprisonment under Part II, Sections 4 to 7 of the Labour Act, the Committee requests the Government to provide figures showing the number of***

*contraventions reported by inspectors in respect of the subjects covered by the Convention, and the sanctions imposed and effectively applied under these texts.*

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

**Labour Inspection (Agriculture) Convention, 1969 (No. 129)**  
(ratification: 1993)

The Committee takes note of the Government's report and the indication that the Government is still not in a position to provide information on inspection work in agricultural undertakings on the basis of which the efficiency of the labour inspection system in agriculture could be assessed.

*Legislation. Further to its previous comments in which it requested the Government to keep the ILO informed of any changes in the standard-setting process referred to in its previous report and under preparation in accordance with guidelines provided by the Safety and Health in Agriculture Convention, 2001 (No. 184), and noting that according to the Government, there have been no developments in the legislation to give effect to Convention No. 129, the Committee requests the Government to keep the ILO informed of any developments in this regard.*

*The Committee would be grateful if, in order to ensure the operation of the labour inspection system in agriculture, the Government would take the measures requested by the Committee in its observation on Convention No. 81 regarding the staff and conditions of service of the labour inspectorate, their material working conditions, the application in practice of appropriate penalties to persons breaching the legislation on conditions of work and the protection of workers, matters which pertain respectively to Articles 14, 15 and 24 of the Convention.*

*The Committee further requests the Government to take the measures and supply the information requested in its direct request on Convention No. 81 in so far as they pertain specifically to labour inspection in agriculture.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 81** (Algeria, Argentina, Armenia, Australia, Azerbaijan, Belarus, Belgium, Belize, Benin, Bosnia and Herzegovina, China: Macau Special Administrative Region, Congo, Côte d'Ivoire, Croatia, Cyprus, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, France: French Guiana, Guadeloupe, Martinique, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Hungary, India, Indonesia, Israel, Jordan, Kazakhstan, Republic of Korea, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Malta, Mauritania, Mauritius, Morocco, Mozambique, Netherlands: Aruba, Netherlands Antilles, New Zealand, Portugal, Russian Federation, Sao Tome and Principe, Senegal, Sierra Leone, Singapore, Slovenia, Solomon Islands, Suriname, Swaziland, United Republic of Tanzania: Tanganyika, Tunisia, Ukraine, United Kingdom: Gibraltar, Jersey, Uruguay, Bolivarian Republic of Venezuela, Viet Nam, Zimbabwe); **Convention No. 129** (Argentina, Azerbaijan, Belgium, Colombia, Côte d'Ivoire, Croatia, Finland, France: French Guiana, Martinique, New Caledonia, Guatemala, Hungary, Kazakhstan, Madagascar, Malawi, Malta, Morocco, Slovenia, Spain, Ukraine, Uruguay); **Convention No. 150** (Albania, Argentina, Belize, Cambodia, Democratic Republic of the Congo, Guinea, Guyana, Lesotho, Malawi, Namibia, Russian Federation, Ukraine, Zambia); **Convention No. 160** (Brazil, Swaziland).

## Employment Policy and Promotion

### Algeria

#### **Employment Policy Convention, 1964 (No. 122) (ratification: 1969)**

1. *Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy.* The Committee notes the Government's report received in June 2007 containing general information on changes in employment and on labour market policies. The Committee refers back to its 2005 observation, in which it indicated that the implementation of recommendations made by the ILO, following the study concerning the reform of the National Employment Agency in the Algerian intermediary system on the labour market (December 2003) and the national consultation on the theme of "Freedom from poverty through work", held in October 2003, should encourage the pursuit of the objectives of the Convention. In this regard, the Committee asked the Government to provide detailed information on the measures taken to implement an active employment policy within the meaning of *Article 1* of the Convention subsequent to the assistance received from the ILO. The Committee notes, however, that apart from some supplementary indications in response to the Committee's 2005 observation, requested in July 2007, the Government has not provided any other information.

2. In its report, the Government states that the economic reform process which was begun in the country in the midst of a difficult socio-economic climate, has generated a labour market imbalance characterized by an increase in unemployment. 1,240,800 people were unemployed in 2006, 70 per cent of which were under 30 years of age and 60 per cent of which had never worked. The main aim of the national employment policy is to reduce the unemployment rate to less than 10 per cent by 2009, in particular by creating 2 million jobs between now and then. In order to achieve this objective, the Government envisages the launch of a number of major projects requiring a considerable workforce, the adjustment of the workforce to the needs of the labour market through training, the regulation of labour supply and demand through the National Employment Agency (ANPE), and support for youth employment. The economic recovery plan and public and private investments already allowed for the creation of 684,000 jobs in 2005.

3. *The Committee once again expresses its concern regarding the effective pursuit of "an active policy designed to promote full, productive and freely chosen employment", "as a major goal" and "within the framework of a coordinated economic and social policy" (Articles 1 and 2 of the Convention). The Committee regrets that the Government has not provided the information requested in the report form on the manner in which the consultation of representatives of the persons affected, required under Article 3 of the Convention, is ensured in practice. It can only insist once again on the importance of giving full effect to this key provision of the Convention, in particular in an environment of very high and persistent unemployment.*

4. *The Committee asks the Government to provide detailed information so as to enable it to examine how the guiding principles of economic policy in areas such as monetary, budgetary, trade and regional development policy, contribute "within the framework of a coordinated economic and social policy" to the pursuance of the employment objectives established by the Convention. The Committee trusts that the Government will provide information on the measures adopted to lower the unemployment rate and the results achieved by the measures taken in the public and private sectors to promote productive employment, particularly of young people.*

5. *Labour market policies in favour of workers with disabilities.* In its report, the Government states that regulatory provisions make it compulsory for employers to reserve a quota of 1 per cent of posts for workers with disabilities. *The Committee asks the Government to provide information on the impact in practice of the measures taken to increase the level of participation of workers with disabilities in the labour market and to ensure that such workers are engaged in productive and lasting employment.*

6. *Collection and use of employment data. Further to its previous comments, the Committee asks the Government once again to provide an account of the progress made to improve the labour market information system and to provide 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.*

[The Government is asked to reply in detail to the present comments in 2008.]

### Angola

#### **Employment Service Convention, 1948 (No. 88) (ratification: 1976)**

1. *Contribution of the employment service to employment promotion.* In the comments that it has been making for many years, the Committee has requested the Government to provide detailed information on the application of the Convention. In two communications received in May and October 2006, the Government referred to the legislative provisions adopted in 2005 governing workbooks (*carteiros profissionais*) and the establishment of a training centre for trainers (CENFOR). The text of Act No. 1 of 2006, the purpose of which is to promote the vocational integration of young persons seeking their first job, was also attached. Act No. 1 of 2006 recognizes that, in order to combat unemployment, the State has to design and implement integrated employment promotion policy measures to train and develop the labour force. The Committee notes that the social indicators are indeed of great concern: 70 per cent of the population has less

than 2 dollars a day to survive and primary school enrolment is increasing very slowly (from 50 per cent in 1990 to 53 per cent in 2000). The Committee therefore emphasizes the need to guarantee the essential function of the employment service in promoting employment in the country. ***In this respect, the Committee requests the Government to provide a report containing the available statistical information concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices (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 on the development of employment policy (Articles 4 and 5);***
- ***the manner in which the employment service is organized and the activities which it performs to carry out effectively the functions set out in Article 6;***
- ***the activities of the public employment service in relation to socially vulnerable categories of jobseekers, with particular reference to workers with reduced mobility and disabilities (Article 7);***
- ***measures proposed by the employment service to give effect to Act No. 1 of 2006 and to provide assistance to young persons seeking suitable employment (Article 8);***
- ***measures proposed by CENFOR and other institutions to provide training or further training to employment service staff (Article 9, paragraph 4);***
- ***measures taken by the employment service in collaboration with the social partners to encourage the full use of employment service facilities (Article 10);***
- ***measures adopted or envisaged by the employment service to secure cooperation between the public employment service and private employment agencies (Article 11).***

2. The Committee recalls that the Office is in a position to provide the Government technical advice and assistance for the establishment of a public employment service, in accordance with the Convention.

[The Government is asked to reply in detail to the present comments in 2008.]

## Barbados

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1976)***

The Committee notes that the Government's report has not been received. It must therefore repeat its 2006 observation which read as follows:

The Committee notes the Government's report for the period ending December 2005, which substantially repeats the information provided in its previously received report in 2003. It notes the observation submitted by the Barbados Workers' Union (BWU), which is included in the Government's report, along with statistical data for 2005 provided by the Government.

1. ***Articles 1 and 2 of the Convention. Implementation of an active employment policy.*** The Committee notes that unemployment levels have remained relatively stable. Whereas unemployment among men rose between 2001 (7.2 per cent) and 2005 (8 per cent), women's unemployment fell by 1.2 per cent over the same period. The Committee recalls from the Government's previous report the efforts of the Bureau of Gender Affairs in mainstreaming the concept of gender with the objective of providing greater benefits for women in the area of employment, and to the work realized by the Ministry of Social Transformation that, through a number of programmes, is assisting in generating employment for its predominantly female clientele. In addition, the Committee recalls the efforts of the urban and rural development commissions to promote the development of the infrastructure and encourage rural employment creation both in agriculture and in non-agricultural activities. ***The Committee would appreciate receiving comprehensive information in the Government's next report on the programmes implemented and their impact on employment promotion both in the aggregate and as they affect particular categories of workers such as women, young persons, older workers and those in the rural sector. Please also supply information on underemployment as requested in previous comments.***

2. ***Collection and use of employment data.*** The Government explains that the Statistical Department and the Ministry of Labour and Social Security are responsible for collecting and analysing data concerning the size and distribution of the labour force. ***Please provide information on how the various policies and programmes to promote employment are kept under periodical review within the framework of a coordinated economic and social policy.***

3. ***Persons with disabilities.*** In its previous report, the Government provided information on the development of a Green Paper on persons with disabilities that outlined a strategic approach to improving the situation of disabled workers in the labour market. The Government might consider it useful to refer to the instruments on people with disabilities adopted by the Conference in 1983 (Convention No. 159 and Recommendation No. 168). ***The Committee would be grateful if the Government would include data in its next report on the integration of workers with disabilities into the labour market.***

4. ***Article 3. Participation of the social partners in the formulation and implementation of policies.*** The Committee notes that discussions on employment policies are held with the social partners. It recalls that a national consultation on the economy was convened in 2002 to seek the support of the social partners in maintaining employment levels in view of the global economic downturn. A three-month moratorium was agreed upon in relation to wage negotiations in key sectors of the economy. ***The Committee reiterates its request for further details on the manner in which consultations are held with representatives of the social partners, including representatives of rural and informal sector workers, and on the outcome of these consultations concerning employment policies (Article 3).***

5. The Committee notes that the BWU's statement, which closely follows the provisions on the informal economy in the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), expresses concern that average incomes in the informal economy are lower than those in the formal economy. The Committee notes the BWU's support for 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. *In this regard, the Committee refers to the conclusions of the general discussion on the informal economy at the International Labour Conference (ILC, Provisional Record No. 25, 90th Session, Geneva, 2002) and invites the Government to report on its efforts to promote decent work for informal economy workers.*

## Bolivia

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1954)**

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 Committee notes the report for the period between 2000–05 and the attached documentation which was received in February 2006. The Government has forwarded a draft of a Presidential Decree regulating the activities of private employment agencies. Certain provisions of the draft regulations could give effect to the provisions of the Convention: for example, private employment agencies appear to be subject to the supervision of a competent authority. However, the draft regulations do not include other requirements envisaged by the Convention: the text examined appears to show that only in the case of domestic work may the fees charged for the employment placement undertaken by private employment agencies not be charged to domestic workers. The Committee emphasizes that in accepting Part II of the Convention, the Government made an undertaking to abolish fee-charging employment agencies conducted with a view to profit. Bolivia ratified Convention No. 96 in 1954, but has not given effect to its provisions, which require the adoption of regulations establishing: a yearly permit or licence renewable at the discretion of the competent authority; a scale for the charging of fees and expenses approved by the competent authority or fixed by the said authority; and authorization by the competent authority to place or recruit workers abroad (*Articles 5 and 6 of the Convention*). Moreover, the International Labour Conference has adopted the Private Employment Agencies Convention, 1997 (No. 181), which recognizes the role played by private employment agencies in the operation of the labour market. The Governing Body of the ILO has invited States which are 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 (document GB.273/LILS/4(Rev.1), 273rd Session, Geneva, November 1998). *The Committee therefore requests the Government to provide information on the adoption of the draft Presidential Decree regulating private employment agencies. The Committee requests the Government to keep it informed of the consultations that may have been held with the social partners concerning the eventual ratification of Convention No. 181.*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1977)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2006 observation which read as follows:

1. *Articles 1 and 2 of the Convention. Coordination of economic policy with poverty reduction.* The Committee notes the report received in November 2005 and the particularly full additional documentation received in February 2006. The Government provided a copy of the Statistical Yearbook 2004, as well as reports of the National Regional Development Fund and the National Productive and Social Fund on the implementation of the National Emergency Employment Plan (PLANE I, II and III) and the PROPAS Plan. PLANE provided temporary jobs for 250,000 people during the period May 2004–September 2005. PROPAS assisted over 200,000 people by providing temporary work through the execution of around 1,300 projects to finance infrastructure and community development projects. The Government has also provided information on the new structure and functions of the Ministry of Labour, as set out in Presidential Decree No. 27732 of 15 September 2004. The Ministry of Labour has been assigned responsibility for improving employment policies through their design, adaptation and implementation. The Government also recalls the components of the Bolivian Poverty Reduction Strategy and the main activities envisaged under the Strategy. According to the data provided by the Government, open unemployment in urban areas fell to 8.7 per cent in 2004, although over 36 per cent of the active urban population are self-employed; 12 per cent are reported to be family workers or unpaid apprentices and 4 per cent household employees. *The Committee requests the Government to specify whether the Ministry of Labour is still responsible for declaring and pursuing an active employment policy, as required by the Convention, and asks the Government to continue providing detailed information on the results achieved in the creation of lasting employment and the reduction of underemployment in the context of the national employment policy.*

2. *Coordination of education and vocational training policies with employment policy.* The Committee notes with interest the information concerning the process of the Bolivian National Productive Dialogue (DNBP) 2004, during which it was considered necessary to promote technical and technological education with a view to achieving effective economic recovery. Furthermore, in May 2005, a programme for young persons was approved, consisting of voluntary work by young persons leaving public universities. *The Committee reiterates its interest for the Government to provide information in its next report on the results achieved by the initiatives adopted in the framework of the 2004 dialogue (such as the development of an Integrated Skills System and the implementation of the Programme for the Strengthening of Technical and Technological Training) so as to ensure the coordination of vocational training policies with employment policy. The Committee requests the Government to indicate the results achieved in terms of young persons leaving university who find lasting employment.*

3. *Article 3. Participation of the social partners in the formulation and implementation of policies.* The Committee notes with interest that, in 2005, as proposed by the Subregional Office, an Inter-Institutional Employment Promotion Committee was organized, with the participation of Government authorities and representatives of employers' and workers' organizations. The specific objectives of the Inter-Institutional Committee include the establishment of a climate for the exchange of experience with a view to facilitating employment generation policies. The Government also refers to the National Industrial Development Council (CONDESIN), established in 2002, to coordinate the National Industrial Development Strategy with a view to promoting manufacturing in the country as a strategic basis for employment generation. *The Committee requests the Government to provide with its next report the documents on employment policy approved by the Inter-Institutional Committee and by CONDESIN. The Committee also requests the Government to consider the manner in which representatives of the most vulnerable categories of the population, and particularly representatives of those working in rural areas and the informal*

*economy, are included in the consultations required by the Convention when formulating and enlisting support for employment policy programmes and measures.*

## Cambodia

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

1. The Committee notes with regret that for the seventh consecutive year the Government's report has not been received. It urges the Government to supply a report for examination by the Committee at its next session.

2. In its 2005 observation, the Committee noted the "Better Factories Cambodia" programme, established in 2001, which is managed by the ILO and supported by the Government, the Garment Manufacturers' Association in Cambodia (GMAC) and trade unions (see <http://www.betterfactories.org/ILO/>). The programme is funded by the Governments of Cambodia, France and the United States, as well as by GMAC and international buyers. "Better Factories Cambodia" is creating services to help the industry improve working conditions, while at the same time improving quality and productivity. It offers to the industry a progressive range of training opportunities and resources. ***The Committee asks the Government to provide information on the outcome of this programme and how it contributed to employment creation.***

3. In previous reports received until 2000, the Government indicated that employment generation was the most important strategy for poverty reduction. The Committee had previously noted that greater diversification of the economy was needed to achieve poverty reduction and employment creation. ***It also asks the Government to provide information on the progress made in diversifying the economy, particularly concerning agricultural and rural development. It also requests 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.*** It would also be grateful to be able to examine information on the results achieved in improving the supply of vocational and technical training and promoting an enterprise culture (*Articles 1 and 2 of the Convention* and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)).

4. The Committee noted previously that the country's statistics were not very reliable and that the ILO had provided support to the relevant ministry to develop labour market indicators. ***In this regard, the Committee recalls the importance of establishing a system for the compilation of labour market data and asks the Government to inform it on any progress made in this field and to provide information on the employment policy measures adopted following the establishment of new information systems.***

5. *Article 3. Participation of the social partners.* The Committee noted previously that a tripartite Labour Advisory Committee had been formed in 1999. ***Please supply information on the activities of the Labour Advisory Committee, including information on whether it is consulted on the development and review of employment policies and programmes. It further requests the Government to supply information on how the views of the persons affected, such as rural and informal sector workers, are taken into account.***

6. Finally, the Committee emphasizes the fact that the preparation of a detailed report, including the indications requested in this observation, will provide the Government and the social partners with an opportunity to evaluate the achievement of the objectives of full and productive employment set out in the Convention. The Committee draws the Government's attention to the technical assistance offered by the Office, which may assist it to comply with its reporting obligations and in 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 2008.]

## Cameroon

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

The Committee takes note of the Government's brief report received in October 2007, and the comments by the General Union of Cameroon Workers (UGTC) and the General Confederation of Labour-Liberty Cameroon (CGT-Liberté), sent to the Government in September 2007.

1. *Article 1 of the Convention. Declaring and pursuing a national employment policy.* The Government states that following the General Conference on Employment of November 2005, the Ministry of Employment and Vocational Training (MINEFOP) has just convened the meeting of the National Advisory Committee on Labour, whose main role is to give its opinion on the declaration of the national employment policy submitted to it for consideration. The UGTC states that the declaration of the national employment policy has still to be signed by the Government. ***The Committee requests the Government to provide information on the measures actually adopted and implemented, particularly in the context of the declaration of the national employment policy, designed to promote full, productive and freely chosen employment.***

2. *Articles 1 and 2. Coordinating the employment policy with poverty reduction.* The Government states that Cameroon has recently introduced a "target-based budget" with a view to securing clarity as to the impact of public expenditure on the daily life of the population. It indicates in this connection that the medium-term expenditure framework will ensure that employment and poverty reduction are linked. The Committee refers to its observation of 2006, in which

it noted that, according to the International Development Association (IDA) and the International Monetary Fund (IMF), Cameroon has met the requirements for reaching the completion point under the heavily indebted poor countries (HIPC) initiative, particularly in view of the satisfactory implementation of the poverty reduction strategy in 2005, the third annual progress report of which was completed in 2006 (IMF Country Report No. 06/190, May 2006). The IDA and the IMF further observed that the National Employment Fund has continued its actions on the socio-occupational integration of young people in paid jobs and self-employment, notably through the signing of a partnership agreement between the Government and the Cameroon Employers' Association (GICAM), the integration of jobseekers and the conclusion of agreements with vocational training centres and some enterprises for the validation of training modules (IMF Country Report No. 06/260, July 2006). ***The Committee again asks the Government to provide up to date and detailed information on the measures taken to ensure that employment, as a key factor in poverty reduction, is at the core of macroeconomic and social policy. It asks the Government in particular to provide information disaggregated by group on the results achieved in terms of employment, particularly for women, young people, older workers and persons with disabilities, following the adoption of these measures.***

3. *Article 2. Collection and analysis of statistical data.* The Committee noted in its previous comments that during the General Conference on Employment, speakers emphasized that there was a lack of knowledge of the labour market and its operation, due to the absence of reliable statistical information. It noted that the Government had launched a general survey of the population, in particular to determine the distribution of the labour force, the nature, extent and trends of unemployment and underemployment, income, and poverty levels. The Government further indicated that the National Employment and Vocational Training Observatory (ONEFOP) has been in operation since 1 July 2005. ***The Committee asks the Government to provide information on the work of ONEFOP and on progress made in compiling reliable statistical data. Please indicate how the measures adopted under the national employment policy are decided upon and followed up within the framework of a coordinated economic and social policy.***

4. *Article 3. Participation of the social partners in the formulation and implementation of policies.* The Government indicates that the recommendations made by the General Conference on Employment have not as yet had any effect. The General Conference on Employment recommended, inter alia, that committees should be set up to assist the development of local employment in association with the social partners to reflect and act at the local level with a view to creating jobs. The UGTC and CGT-Liberté furthermore indicate that the Government has just set up two tripartite steering committees by decisions of 28 June 2007, one to draft the national employment policy and the other, the MINEFOP strategy. A steering committee to work out a strategy for vocational training and apprenticeship for the reform of the rural craft and domestic science sectors has also been set up and is composed of representatives of the Government and the employers. ***The Committee requests the Government to provide information on the measures implemented, particularly following the recommendations of the General Conference on Employment of November 2005, to ensure that the representatives of those concerned, particularly in the rural sector and in the informal economy, cooperate fully in formulating employment policies. Please also provide information on the working and the activities of the two tripartite steering committees set up in June 2007.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Comoros

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1978)**

1. *Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The Committee notes the Government's report received in October 2007 indicating that a framework document on employment policy is currently being formulated under the supervision of the ILO. A committee composed of the representatives of the various social services and organizations concerned has also been established with a view to facilitating the collection of data that can provide the basis for a true employment policy coordinated with training, social security and retirement policy. The Committee notes the poverty reduction and growth strategy paper (October 2005) which indicates, among other matters, that the registered unemployment rate is 14.3 per cent. It notes that this rate fluctuates in an irregular manner between and even within islands, and that it is high in urban areas. Almost two-fifths of the economically active population and the majority of the rural population work in the primary sector. ***The Committee requests the Government to provide detailed information on the measures adopted to ensure that employment, as a key element of poverty reduction, is placed at the heart of macroeconomic and social policies. It hopes that the Government will be in a position to indicate the concrete measures adopted and implemented in consultation with the social partners with a view to promoting full, productive and freely chosen employment.***

2. The Committee once again emphasizes the importance of establishing a system for the compilation of labour market data so that policies can be based on an accurate appraisal of labour market conditions. ***The Committee once again requests the Government to keep it informed of any progress achieved in this field and to provide information on the employment policy measures adopted as a result of the establishment of new labour market information systems.***

3. *Article 3. Participation of the social partners in the formulation and application of policies.* In the absence of any new information from the Government on this subject, the Committee recalls that 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 (see paragraph 493 of the General Survey of 2004 on promoting employment). *The Committee once again requests the Government to provide detailed information on the consultations envisaged by Article 3 of the Convention, which requires the consultation of all the persons affected, and in particular representatives of employers and workers, when formulating and pursuing employment policies.*

4. *Part V of the report form. ILO technical assistance. Finally, the Committee once again requests the Government to indicate the action taken for the implementation of an active employment policy within the meaning of the Convention, following the technical assistance received from the ILO.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Democratic Republic of the Congo

### **Employment Service Convention, 1948 (No. 88) (ratification: 1969)**

1. *Article 1 of the Convention. Contribution of the National Employment Office to the promotion of employment.* The Committee notes the information contained in the Government's report received in June 2006, particularly the adoption of Act No. 015/2002 of 16 October 2002 on the new Labour Code and Decree No. 081/2002 of 3 July 2002 concerning the establishment, structure and functioning of the National Employment Office (ONEM). The Government states that the ONEM, whose essential task is to promote and implement a better organization of the employment market, in collaboration with the public and private organizations concerned (section 205 of the Labour Code), replaces the National Employment Service. The Department of Employment, on the other hand, has the essential task of contributing towards the conception, definition and implementation of employment policy (section 203 of the Labour Code). *The Committee asks the Government to indicate in its next report the manner in which the ONEM ensures that the free public employment service functions effectively, explaining how the ONEM participates in the implementation of the measures taken in the context of the poverty reduction strategy.*

2. *Article 3. Regional branches of the National Employment Office.* The Committee notes the Government's statement that the ONEM, which provides free public services, is already operational, mainly in the city of Kinshasa, where it has opened a provincial department responsible for placement activities, other departments having been opened in Lubumbashi, Matadi and Mbuji-Mayi. *It asks the Government to continue to supply information on the establishment of ONEM provincial offices in sufficient numbers to meet the needs of employers and workers in each of the geographical regions.*

3. *Articles 4 and 5. Consultation and cooperation with the social partners.* In reply to the Committee's previous comments, the Government states that at the 29th Session of the National Employment Council on the revision of the Labour Code, the employers' and workers' organizations were in favour of splitting the National Employment Service into two separate services: namely, the Department of Employment and the ONEM. The Committee also notes section 12 of Decree No. 081/2002 of 3 July 2002, which states that the ONEM board, which is responsible in particular for adopting strategies to promote employment and for following up the implementation of employment programmes or projects, is composed of four employer delegates and four worker delegates. *The Committee asks the Government to continue to supply information on discussions held with representatives of the employers and workers, particularly within the ONEM board and the National Labour Council, on the structure, functioning and development of policy of the Department of Employment and the ONEM.*

4. *Article 11. Private employment services.* The Committee notes section 207 of the Labour Code, provides that an order of the Minister responsible for labour and social welfare, which is adopted after an opinion from the National Labour Council, provides the procedures for establishing and operating private employment services. *The Committee asks the Government to keep it informed of any order adopted with regard to private employment services, stating, what measures if any have been adopted to ensure effective cooperation between these private services and the ONEM.*

5. *Parts IV and VI of the report form. Information on the practical application of the Convention.* The Government states that the requested statistics are not yet available at the ONEM but, once these have been received from the ONEM, the Government will forward them to the ILO. *The Committee hopes that the Government's next report will contain statistics (number of existing public employment offices, number of applications for employment received, number of vacancies notified and number of persons placed in employment by such offices) enabling it to appreciate the manner in which the Convention is applied in practice.*

## Djibouti

### **Employment Service Convention, 1948 (No. 88) (ratification: 1978)**

1. The Committee notes that the Government has not provided a report in response to its observation of 2006. It notes the observations received in August 2007 from the General Union of Djibouti Workers (UGTD), sent to the Government in September 2007. *The Committee requests the Government to supply a report containing specific*

*information in reply to the UGTD's observations and the Committee's observation of 2006, particularly on the following points.*

2. *Articles 1 and 3 of the Convention and Part IV of the report form. Contribution of the employment service to promoting employment.* The Committee notes that, according to the UGTD, the National Employment Service (SNE) is the key element in the promotion of strategies to stimulate the creation of lasting and decent employment. The UGTD indicates that with the increase in the number of private employment agencies, the SNE's Labour Office no longer has the monopoly in the sector but that it still carries out placement of jobseekers on the basis of the posts and jobs requested by enterprises. ***Referring to its comments on the application of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), and the Employment Policy Convention, 1964 (No. 122), the Committee again requests the Government to send information on the activities carried out by the public employment service in order to achieve the best possible organization of the employment market, in particular by adapting its network of services to the needs of the economy and the active population. Furthermore, the Committee requests the Government to provide statistics on the number of public employment offices, job requests received, offers of employment notified and placements carried out by these offices, with particulars of the steps taken to meet the needs of employers and workers throughout the country.***

3. *Articles 4 and 5. Cooperation with the social partners.* The Committee notes that, referring to *Article 4* of the Convention, the UGTD says that in order to strengthen the role and efficiency of the SNE, it would be appropriate to undertake an in-depth review of its purposes and activities with a view to redefining its functions, and to associate employers' and workers' organizations in the formulation of policies and strategies to improve the services offered. In its report received in October 2005, the Government said that it hoped that the national crisis in the trade unions would shortly be resolved with assistance from the ILO and that the conditions would be met to organize a national tripartite consultation at all levels, in the context of the organization and running of the SNE. ***The Committee expresses the firm hope that the Government will be in a position to report on the working of the tripartite consultative committees in order to secure the cooperation of representatives of the employers and workers in the organization and operation of the employment service, and in developing employment service policy.***

4. *Articles 7 and 8. Special needs of persons with disabilities and young people.* The Government indicated in 2005 that section 8 of Act No. 75/AN/00 provides for the establishment of a vocational placement service, the role of which is to set up an employment and vocational training observatory and to implement programmes in response to the needs of the economy. ***The Committee reiterates its interest to be provided with information indicating whether a vocational placement service has actually been established and requests information on any progress made in this respect.***

5. *Article 9. Training of the staff of the employment service.* ***The Committee again asks the Government to provide up to date information on the measures taken or planned to establish training for the staff of the SNE.***

[The Government is asked to reply in detail to the present comments in 2008.]

### ***Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1978)***

1. The Committee notes that the Government has not submitted a report in response to its observation of 2006. However, it notes the observations by the General Union of Djibouti Workers (UGTD) on the implementation of Convention No. 96 received in August 2007 and sent to the Government in September 2007. The UGTD indicates that since Decree No. 11/PRE/97 on the liberalization of employment was issued, the number of private employment agencies has risen and that the activities of the National Employment Service (SNE) have decreased as a result. According to the UGTD, in order to ensure that Convention No. 96 is applied, it is essential that the regulatory body, namely the National Committee on Labour, Employment and Vocational Training, be put into operation to set up practical arrangements in the field for inspection services in order to detect anomalies and inconsistencies. The Committee takes note of Act No. 133/AN/05/5thL enacting the Labour Code of 28 January 2006, and particularly section 6 on private employment agencies and interim contracts. ***The Committee requests the Government to send a report containing specific information on the new legislative measures adopted to enforce each Article of the Convention, together with responses to the UGTD's observations and the Committee's observation of 2006 on the following points.***

2. *Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit.* In its observation of 2006, the Committee took note of the information in the Government's report received in October 2005, and of the comments made by the Labour Union of Djibouti (UDT) and the UGTD on the application of the Convention. In its report, the Government referred to Act No. 75/AN/00/4thL on the organization of the Ministry of Employment and National Solidarity which liberalizes employment. The Government explained that in areas where it has no office, the SNE is represented by district commissioners and that, with employment liberalization, employers can recruit freely and then regularize the situation with the SNE. The Committee further noted that according to the UDT and the UGTD, fee-charging employment agencies have been legalized in Djibouti for the last three years. The unions alleged that these agencies act as filters for employment, charge jobseekers and even deduct sums illegally from workers' wages. ***The Committee again asks the Government to provide precise information on the manner in which the provisions of the Convention are applied in practice, including a summary of the reports of the inspection services, information on***

*the number and nature of contraventions reported and any other particulars regarding the hiring and placement of workers abroad.*

3. *Revision of Convention No. 96.* The Committee recalls that the Private Employment Agencies Convention, 1997 (No. 181), acknowledges the role played by private employment agencies in the operation of the labour market. The Governing Body of the ILO has invited States parties to Convention No. 96 to contemplate ratifying, as appropriate, the Private Employment Agencies Convention, 1997 (No. 181), pointing out that this would entail the immediate denunciation of Convention No. 96 (document GB.273/LILS/4(Rev.1), 273rd Session, Geneva, November 1998). ***The Committee requests the Government to keep it informed of any developments which, in consultation with the social partners, might occur in this regard.***

[The Government is asked to reply in detail to the present comments in 2008.]

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1978)***

1. The Committee notes that the Government has not provided a report in reply to its 2006 observation. It notes the observations of the General Union of Djibouti Workers (UGTD), received in August 2007 and forwarded to the Government in September 2007. ***The Committee requests the Government to provide a report containing precise and updated indications in reply to the observations of the UGTD and to its observation of 2006, with particular reference to the following points.***

2. *Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The UGTD recalls that the Government, in the context of the implementation of its general policy, planned to hold a national employment conference so that the various actors involved could make their contribution and ensure that the employment policy was more effective. However, the UGTD indicates that this national conference, which was intended to result in the adaptation of vocational training structures to the actual labour market situation and the creation of jobs through the promotion of foreign investment and the creation of small and medium-sized enterprises or industries, has still not been held. The Committee refers to its 2006 observation, in which it noted that, among the brief information provided by the Government in October 2005, reference was made to the formulation of a national employment policy and the organization of an employment conference in 2006. The Government indicated that it was on the point of completing, with ILO technical assistance, a plan of action on employment policy based on job creation and decent incomes for women and men with various components, such as the development of labour market and employment statistics, the reform of labour market administrative structures and institutions, vocational training and job creation in small and medium-sized enterprises. The Committee further noted that, according to the information contained in the Poverty Reduction Strategy Paper of 2004, the unemployment rate was 59 per cent and that over half of the persons concerned were seeking their first job. Moreover, the Committee noted that the participation of women in the labour market remained extremely limited, with an employment rate of under 35 per cent. ***The Committee requests the Government to provide detailed and up to date information on the measures taken to ensure that employment, as a key element of poverty reduction, is at the heart of macroeconomic and social policies. It requests the Government to provide information on the results achieved, disaggregated by category, particularly for young persons and women, through the measures adopted to improve the supply of vocational and technical training and to promote small and medium-sized enterprises. Please also report on the holding and the outcome of the national conference on employment, and on the progress achieved with the Poverty Reduction Strategy, which it has been implementing since 2001.***

3. The Committee once again emphasizes the importance of establishing a system for the compilation of labour market data so that policies can be based on a precise assessment of labour market conditions. ***The Committee once again requests the Government to provide information on any progress achieved in the compilation of employment statistics, and on the employment policy measures adopted following the establishment of the new labour market information systems.***

4. *Article 3. Participation of the social partners in the formulation and application of policies.* The UGTD indicates that, with regard to the participation of the social partners in the formulation of employment policies, the Government, in the context of the national employment policy, has given priority to a concerted approach with the involvement of employers' and workers' organizations in the various commissions responsible for implementing this national strategy. The Committee recalls that 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 (see paragraph 493 of the 2004 General Survey on promoting employment). ***The Committee once again requests the Government to provide detailed information on the consultations required by Article 3 of the Convention, which involve the consultation of representatives of all the persons affected, in particular representatives of employers and workers, in the formulation and implementation of employment policies.***

5. *Part V of the report form. ILO technical assistance.* Finally, ***the Committee once again requests the Government to describe in its next report the action taken to implement an active employment policy within the meaning of the Convention following the technical assistance received from the ILO.***

[The Government is asked to reply in detail to the present comments in 2008.]

## France

### **Employment Service Convention, 1948 (No. 88) (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:

1. *Contribution of a free public employment service to employment promotion.* The Committee notes the information contained in the Government's report received in February 2006 covering the period ending 1 September 2005. In particular, it notes the adoption of Act No. 2005-32 of 18 January 2005 establishing the programming for social integration, which revised the organization of the public employment service, and of the Decree of 2 August 2005 on follow-up measures for jobseekers. The Committee notes the end of the legal monopoly of the National Employment Agency (ANPE) for the placement of jobseekers, thereby enabling private employment agencies and temporary work agencies to engage in employment placement activities. The obligation for employers to notify vacancies only to the ANPE has been abolished. The Government states that, in exchange for the end of the employment placement monopoly from which it has benefited up to now, the ANPE has now been granted the possibility of establishing branches to discharge its functions and to charge enterprises fees for the use of its services, except from jobseekers (section L.311-7(3) and (4) of the Labour Code). The Committee notes that a decree is due to be adopted in the Council of State to determine the provisions, including financial rules, under which the ANPE will be able to operate, so as to preserve the quality of the service provided to users and prevent any distortion of competition with private operators. **With reference to its 2006 observation on the application of the Employment Policy Convention, 1964 (No. 122), the Committee requests the Government to continue reporting on the measures adopted to maintain or ensure the maintenance of a free public employment service, within the meaning of Article 1, paragraph 1, of the Convention.**

2. *Development of employment offices throughout the territory.* The Government indicates that by redrawing, through the adoption of the Act of 18 January 2005, the limits of the public employment service and by extending the service, the intention is to improve the manner in which unemployment is addressed by making the labour market more dynamic and establishing a firm basis for employment policies throughout the territory. The Committee notes in this respect that, with a view to improving the effectiveness of the public employment service, the Act of 18 January 2005 envisages the establishment of 300 "employment centres", with the objective of ensuring better cooperation between the various actors in the public employment service in urban areas and employment zones. The Government states that, by the end of 2005, a total of 103 employment centres had been designated, with 200 being envisaged by the end of 2006. **The Committee requests the Government to continue reporting on developments relating to the measures adopted to establish and locate sufficient employment offices to serve the needs of employers and workers in each geographical area (Article 3).**

3. *Cooperation with the social partners.* The Government indicates that, in response to the need to coordinate the principal actors in the public employment service, section L.311-1(4) of the Labour Code envisages the conclusion of a multi-year tripartite agreement between the State, the ANPE and UNEDIC, so as to determine the functions and resources of the ANPE and UNEDIC for the implementation of this public employment service. **With reference to Article 4 of the Convention, the Committee requests the Government to indicate the arrangements made to secure the cooperation of employers' and workers' representatives in the organization and operation of the employment service and in the development of employment policy.**

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1953)**

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. Revision of Convention No. 96.* The Committee notes the Government's report received in February 2006 for the period ending 1 September 2005. It notes with interest the Government's statement that the revision of the public employment service, introduced by Act No. 2005-32 of 18 January 2005 establishing the programming for social integration, forms the basis of the new dynamic to which the Government aspires, so as to achieve conformity with the provisions of the Private Employment Agencies Convention, 1997 (No. 181), and accelerate the reintegration of the unemployed into working life by allowing private operators to enter the employment market. In this respect, the Committee recalls that Convention No. 181 is based on an acknowledgement of the role played by private employment agencies in the operation of the labour market and that its ratification would involve the immediate denunciation of Convention No. 96. **As the provisions of Convention No. 96 remain in force until the ratification of Convention No. 181 becomes effective, the Committee requests the Government to provide information in its next report so that it can examine the application in law and practice of the matters also raised this year in a direct request (Parts IV and V of the report form).**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2006 observation which read as follows:

1. *Articles 1, paragraph 1, and 2 of the Convention. Labour market trends and active employment policy.* The Committee notes the Government's report received in October 2005, covering the period ending October 2004, and the comprehensive documentation attached. The Committee notes that, during the period under consideration, the employment rate remained stagnant (62.5 per cent in 2003 and 62.4 per cent in 2004) and that it was lower relative to the European average of 63.3 per cent (the target set within the framework of the European Employment Strategy is 70 per cent by 2010). The Committee notes the information provided in the National Action Plans for Employment (PNAE) for 2003 and 2004, and, in particular, the fact that improving the dynamism of the labour market and creating sustainable employment constitute one of the Government's main priorities. In this regard, the Committee notes the various measures to promote economic activity, which are listed in the Government's report (reduction of employers' social security contributions, the new scale for the *prime pour l'emploi* (working tax credit) in 2003, and measures to facilitate the creation of enterprises). **The Committee would be grateful if the Government would provide information on the results achieved through the implementation of recently adopted and ongoing measures, and indicate the strategic employment policy priorities targeted by these measures.**

2. *Article 1, paragraph 2. Labour market policies for young people.* The Committee notes that during the period examined, the OECD standardized unemployment rate remained stagnant (9.5 per cent in 2003 and 9.6 per cent in 2004), whilst

the youth unemployment rate rose to over two times that of the active population as a whole (from 20.1 per cent in 2003 to 21.3 per cent in 2004). The Committee notes that, according to the Government's report, 57,000 young people who had been unemployed for one year were to be interviewed individually by the National Employment Agency before the end of September 2005, and that the number of work placement contracts (CAE) was to be increased from 20,000 to 100,000. The Government indicates that one of the objectives of the employment policy for young people is to bring them closer to enterprises by strengthening work-based training and by facilitating their direct integration into enterprises. To realize this objective, the Government has established various subsidized contracts for those who are least qualified: the *contrat jeunes en entreprise* (young people in the enterprise contract); the *contrat d'insertion des jeunes dans la vie sociale* (integration of young people into society contract); and the *contrat soutien à l'emploi des jeunes en entreprises* (support for the employment of young people in enterprises contract). The Committee notes that, with regard to young people who have left school without any diplomas or qualifications (in 2003, 19.1 per cent of young people of 22 years of age had no secondary school diploma), an adapted military service offering recognized training and supervision will be proposed to those who are interested. This scheme aims to provide training for 20,000 young people in 2007. In this regard, the Committee refers to paragraph 9 of the *Conclusions on promoting pathways to decent work for youth*, adopted at the 93rd Session of the Conference, which states that whilst employment cannot be directly created but only encouraged by legislation or regulation, it is recognized that labour legislation and regulation based on international labour standards can provide employment protection and underwrite increased productivity, which are basic conditions in order to create decent work, particularly for young people. **The Committee invites the Government to provide information in its next report on the results achieved through measures taken to promote decent employment for young people, particularly for those who have few or no qualifications.**

3. *Labour market policies for older workers.* The Committee notes that the employment rate for older workers is one of the lowest in the European Union (37 per cent in 2004) and that, in this respect, the Government refers in detail to the provisions of the Act of 21 August 2003 reforming pensions, which envisages prolonging the period of insurance and thus the working life of a worker, by encouraging workers over 55 years of age to remain in employment, particularly by limiting recourse to early retirement pensions and by creating work opportunities for those over 60 years of age. Annual negotiations in enterprises must now address, every three years, the issue of access to employment for older workers, the retaining of such workers in employment, and their access to vocational training. **The Committee invites the Government to provide, in its next report, information on the results achieved through the measures taken to promote the continued employment and reintegration into the labour market of older workers.**

4. *Education and training policies.* The Committee notes that since 2002, long-term unemployment has risen significantly (from 33.8 per cent in 2002 to 41.7 per cent in 2004). The Government indicates that the New Start Personalized Action Programme (PAP-ND), which, in July 2001, reformed the system for monitoring the unemployed, enabled the number of return-to-work assistance benefits to increase by 84 per cent between 2001 and 2002, although additional support concerned only 17 per cent of unemployed persons. The number of unemployed persons benefiting from the employment initiative contract (CIE) between their 12th and 24th month of unemployment increased due to the relaxation of access requirements (93,000 employees were recruited in 2004). The Government also refers to the adoption of the Act of 4 May 2004 on lifelong vocational training and social dialogue, which establishes the individual right to training and contains provisions on contracts and periods of vocational integration. This Act follows the interoccupational agreement concluded by the social partners in December 2003. In response to the Committee's 2003 direct request, the Government indicates that the decentralization movement was pursued by the Act of 27 February 2002 on local democracy and the Act of 13 August 2004 on local freedoms and responsibilities, which give regional councils general competence in respect of vocational training for young people and adults who are seeking employment or a new direction in their career. They must, in consultation with the State and employers' and workers' organizations, devise a regional plan to develop vocational training for young people and adults. **The Committee invites the Government to continue providing information on the measures adopted within the framework of education and training policies, and on their impact in terms of the sustainable integration of the most vulnerable categories of workers in the labour market.**

5. *Article 3. Participation of the social partners in the preparation and formulation of policies.* In response to the Committee's 2003 direct request, the Government states that it firmly subscribes to a tradition of labour law that gives priority to collective bargaining, as witnessed by the adoption of the above Act of 4 May 2004. **Bearing in mind the numerous initiatives taken to promote full employment, the Committee asks the Government to indicate, in its next report, the manner in which the representatives of the persons affected were consulted when policies were prepared and formulated "with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies" (Article 3).** The Committee recalls, in this regard, that it is the joint responsibility of governments 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 the measures of which they should be the prime beneficiaries (2004 General Survey on promoting employment, paragraph 493).

## Ghana

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1973)**

1. *Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit.* In reply to the 2006 observation, the Government states in its report received in September 2007 that even though the Labour Act, 2003, in section 7, allows the establishment of private fee-charging employment agencies when a licence has been granted by the Minister, there are none in existence. The Labour Regulations, 2007, which became effective on 28 May 2007, contains provisions under section 3 regulating private employment agencies, including those conducted with a view to profit. The Committee once again emphasizes that Members which ratify Convention No. 96 and which, like Ghana, accept Part II of the Convention, undertake to abolish fee-charging employment agencies conducted with a view to profit. It recalls that Ghana ratified Convention No. 96 on 21 August 1974 and is therefore under an obligation to abolish fee-charging employment agencies conducted with a view to profit. **The Committee accordingly draws the Government's attention to the fact that the provisions regarding private employment agencies contained in the Labour**

*Act, 2003, and in the Labour Regulations, 2007, do not give effect to the obligations set out in the Parts of Convention No. 96 that have been accepted by Ghana.*

2. *Revision of Convention No. 96.* The Committee recalls that the revision of Convention No. 96 was prompted by recognition of the role played by private employment agencies in the operation of the labour market and that the Private Employment Agencies Convention, 1997 (No. 181), is now the latest standard in this area. It recalls that the ILO Governing Body invited the States parties to Convention No. 96 to contemplate ratifying, as appropriate, Convention No. 181, which would involve the immediate denunciation of Convention No. 96 (document GB.273/LILS/4(Rev.1), 273rd Session, Geneva, November 1998). ***The Committee once again invites the Government to report on measures taken, in consultation with the social partners, in relation to this issue.***

[The Government is asked to report in detail on the present comments in 2008.]

## Guinea

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

1. 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 clear and up to date information, in reply to the points raised in the Committee's 2004 observation, which read as follows.***

2. *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. It was planned 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 (conclusions of the workshop held in Conakry in September 2003 for approving the framework document for employment policy in Guinea). The Government also pointed out the distinct trend towards self-employment in the informal economy, resulting in the urgent need to set up a genuine micro-enterprise development programme. The Committee once again 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.***

3. *Article 3. Participation of the social partners in the formulation and application of policies.* The Committee recalls 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 (see paragraph 493 of the 2004 General Survey on promoting employment). ***The Committee trusts that the Government will include detailed information in this regard.***

4. *Part V of the report form. ILO technical assistance.* ***Furthermore, 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 2008.]

## Italy

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

1. *Follow-up of the discussion at the 96th Session of the International Labour Conference (June 2007).* Subsequent to its 2006 observation, the Committee notes the conclusion of the tripartite discussion that took place at the Conference Committee in June 2007. The Conference Committee invited the Government to pursue its national programmes for full and productive employment, the promotion of decent work and high-quality work for all, as required by the Convention. Replying to requests by the Conference Committee and the 2006 observation, the Government supplied in August and October 2007 comprehensive information in which it confirms its intention to reduce temporary and part-time employment contracts by imposing time limits on such contracts, in order to facilitate workers obtaining permanent employment contracts. ***The Committee welcomes this approach and encourages the Government to continue providing information in its next report on the manner in which the objective of full and productive employment has been taken into account in the formulation of economic and social policy. It would also appreciate continuing to receive information on the experience of the social partners in regard to the application of the Convention.***

2. *Articles 1 and 2 of the Convention. Employment trends and active labour market policies.* The Government provided data indicating that, although the unemployment rate continued to decline, figures from the first quarter of 2007 show that there was a slowdown in employment growth after a sustained growth in 2006. Also, an increase in employment in the north and centre regions in 2006 was noted while observing a decrease in the south for this same period. Measures were taken to combat clandestine work which resulted in 94,000 workers in the construction industry being added to the legal registers. Also, the status of 22,000 call centre workers changed from self-employed persons to workers with an employment contract. Amendments to Act No. 30 of 2003 were adopted through the Finance Act 2007 and Decree-Law No. 223/2006 including other measures geared at encouraging growth and employment, combating illegal work and promoting safety in the workplace. Provisions included increasing tax deductions for corporations employing workers with an indefinite-term contract of employment and actions to suspend work on construction sites where illegal workers are employed. ***In this regard, the Committee asks the Government to provide further information on the effects of legislative and other measures adopted to promote employment and, more specifically, on closing the gap between the various regions of the country as to the levels of employment.***

3. *Means to promote youth employment.* The Government raised the minimum age from 15 to 16, and provided additional financing for vocational training and the training of apprentices. It also intends to pass legislation directed at combating youth unemployment. The proposal for future legislation includes measures such as facilitating access to funding for young entrepreneurs as well as easing the transfer of small businesses from one generation to the next. Also, Decree-Law No. 223/2006 established a Youth Policy Fund that aims to promote the right of young people to cultural and vocational training and that creates measures to facilitate access to credit. The Committee notes the 2006 ISTAT labour force survey indicating that 21 per cent of students leave school prematurely. Some 900,000 people left school prematurely with a disproportionate percentage of school leavers in the south compared to the north or centre. Moreover, school leavers in the south typically do not enter the labour force in contrast to those in the north and centre who tend to be early entrants into the labour force. The survey also indicated that males tend to leave school at a higher rate than females. ***In this regard, the Committee asks the Government to include in its next report information on how recently adopted measures, geared at combating youth unemployment, have translated into lasting employment opportunities for young workers entering the workforce.***

4. *Women and other specific categories of vulnerable workers.* The Committee notes that the Government has indicated its intention to continue with the implementation of measures to promote employment of women under the Finance Act of 2007 which includes tax incentives for the employment of women on indefinite-term contracts in the south of the country. The Government has taken measures to encourage the re-employment of workers over 50. In particular, it has enacted legislation to create the possibility of “solidarity between generations” agreements whereby those over 55 may voluntarily convert from full-time to part-time status, with unemployed young persons under 25 permitted, under a part-time contract, to work the number of resulting hours. ***The Committee notes with interest this innovative approach and asks the Government to provide in its next report detailed information on the impact of measures designed to encourage and support employment levels of vulnerable categories of workers such as women and older workers.***

5. *Article 3. Participation of the social partners in the formulation and application of policies.* The Government reports that social dialogue and consultation was reinforced with the social partners, at both the local and national level, by establishing permanent consultative round tables. It indicates that interaction with the social partners in the numerous consultative round tables on welfare, protection of the labour market and growth has been decisive in defining the problems encountered. ***The Committee trusts that the Government will continue to provide information on the consultations held with the social partners including details of their contribution to the implementation of an active employment policy within the meaning of the Convention.***

## Kyrgyzstan

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1992)***

1. The Committee notes with regret that it has not received the Government’s report since the June 2005 report. ***The Committee asks the Government to provide a detailed report on the application of the Convention containing up to date and precise information and replying to the 2005 observation which raised the following matters.***

2. *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, amongst 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 Government also indicated that the employment rate fell slightly from 92.5 per cent in 2000 to 91.1 per cent in 2003. The unemployed young people accounted for 53 per cent of overall unemployment and remained one of the most problematic issues (as mentioned in the Poverty Reduction Strategy Paper Progress Report of July 2004). In 2001, the poverty rate was estimated by the World Bank to be considerably high between 45 per cent and 56.4 per cent. The Committee noted the Government’s indication

that the goals of employment policies and their relation to social and economic development are reflected in the programme on the “Comprehensive basis of development of the Kyrgyz Republic until 2010”, which was adopted on 29 May 2001. *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 (paragraph 490 of the General Survey of 2004 on promoting employment). *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.*

3. *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”.*

4. *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 representatives of other sectors of the active population, such as persons working in the rural sector or in the informal economy.*

## Latvia

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1992)**

The Committee takes note of the detailed and comprehensive information provided by the Government in its report received in September 2006, including the information provided in response to the 2004 direct request.

1. *Employment trends and active labour market measures.* The Government reports that the Latvian National Reform Programme for 2005–08 identifies stimulating knowledge and innovation, fostering employment, and improving education and skills amongst its main economic policy directions, setting a national target employment rate of 67 per cent for 2010. The employment level of the population was 61.8 per cent in 2003, rising to 63.4 per cent in 2005. In 2003, the economic activity rate of the population in the 15–64 age group was 69.2 per cent, whereas in 2004 and 2005, it was 69.6 per cent and 69.5 per cent, respectively. From 2001 to 2005, the gross domestic product demonstrated an annual increase of 1.8 per cent, reaching 10.2 per cent in 2005. *The Committee welcomes these results and asks that the Government continue providing information on the effect its general and sectoral economic policies have had in achieving its employment objectives.*

2. The Committee notes the significant disparities in employment and unemployment levels amongst regions. In 2004, when the national unemployment level stood at 6.2 per cent, the unemployment level in the Latgale region was 12.2 per cent, whereas in the Riga region, the level of unemployment was 3.8 per cent. The Government also reports that the unemployment level in the Kurzeme, Zemgale and Vidzeme regions were slightly higher than the national average. In this connection, the Committee notes the measures taken to encourage regional development and diversity of employment opportunities in rural areas and small towns, such as the income tax incentives for businesses operating in specially assisted regions, as set forth in the Laws “On Enterprise Income Tax” and “On Personal Income Tax”. The Government also reports that it elaborated a set of principles of regional policy, upon which it was developing a Monitoring and Evaluation System for Regional Development (RAUNS) which seeks to ensure monitoring and evaluation of the regional policy in order to promote balanced and sustainable development of the country’s territories. *The Committee asks the Government to provide further information on the measures pursued to promote equal territorial development and higher employment levels, and the results thereof. Please also provide information on the functioning and effectiveness of the tools developed to monitor the implementation of the principles underpinning the regional policy.*

3. *Youth employment.* The Government reports that the unemployment level of young people aged 15–24 years is higher than that of other age groups. In 2004 and 2005, respectively, 37.3 per cent and 37.4 per cent of the total number of young people were economically active. The Committee notes that the unemployment ratio of young people was 18.5 per

cent in 2003 and 12.9 per cent in 2005. The Government reports that this indicates a need to undertake further measures aimed at more efficient integration of youth into the labour market. In this regard, the Committee notes that, in 2005, 9,264 young persons were involved in the State Employment Agency's competitive enhancement measure for the "Acquisition of working skills during summer holidays by persons studying in general secondary education or vocational secondary education establishments". ***The Committee welcomes receiving information on the implementation of such, and other measures, designed to improve the accessibility of the labour market for young persons.***

4. *Older workers and other specific categories of vulnerable workers.* The Committee notes that in 2004, 52.3 per cent of persons between 55 and 64 years of age were economically active, whereas in 2005 the proportion of economically active persons in this age group was 54.2 per cent. The employment level of older people (age group 55–64) is steadily growing. In 2004, the employment level of older persons increased by 3.9 percentage points from 44.1 per cent to 48 per cent, increasing by a subsequent 1.8 percentage points in 2005 to 49.8 per cent. ***The Committee asks the Government to continue providing information on measures taken to continue the trend of increased economic activity of the older population, and any such measures designed to encourage and support employment levels of other particular categories of workers, including women and workers with disabilities.***

5. *Education and training policies.* The Government reports that while, for the most part, jobseekers have a relatively high level of education, i.e. in 2005, 67.6 per cent of jobseekers had secondary education or secondary vocational education, and 10.7 per cent had higher education, many workers lack information and communication technology skills, communication skills, foreign language skills and knowledge in business basics in accordance with the requirements of the modern labour market. The Committee notes that in 2005, 7.6 per cent of the population aged 25–64 were involved in education and training activities, whereas in 2004 the rate stood at 9.1 per cent. The number of unemployed persons involved in the active employment measures of the State Employment Agency (SEA) increased considerably and, in 2005, 10,435 unemployed persons were involved in vocational training, retraining and qualification improvement activities organized by the SEA, while 152,950 unemployed persons were involved in competitiveness enhancement measures. The Committee notes that a national programme on "Development and implementation of the lifelong learning strategy" was elaborated, aimed at developing a single concept approach to lifelong learning, determining the preferable lines of development and defining objectives and tasks for lifelong learning up until 2010, and determining the distribution of responsibilities for its implementation. The national programme has the following objectives: (a) the implementation of a balanced and modern education system and education policy in line with the labour market requirements; (b) provision of lifelong learning according to the interests of the population, its capacities and plans for regional economic development; and (c) ensuring the capacity of the education system to implement the Lifelong Learning Strategy in the long term. ***The Committee requests that the Government continue to provide, in its next report on Conventions Nos 142 and 122, which are due in 2008, information on the measures taken in the area of education and training policies and on their relation with prospective employment opportunities.***

6. *Article 3. Participation of the social partners in the formulation and application of policies.* The Committee notes with interest that the development of the National Lisbon Programme of Latvia pursuing the European Union initiative was coordinated by the Supervisory Board of the Lisbon Strategy which also consulted the *Saeima* and representatives of the Latvian Employers' Confederation and the Free Trade Union Confederation of Latvia. The Government also reports that a strategic line of activity of the SEA was the development of closer and more efficient cooperation with its partners – employers and local authorities, so as to efficiently promote employment and reduce unemployment in the regions. ***The Committee requests that the Government continue to provide information on the consultations held on the matters covered by the Convention with the representatives of employers' and workers' organizations including details of their contribution to the implementation of an active employment policy. It similarly welcomes being kept apprised of the manner in which the SEA effects consultations and closer cooperation with the social partners, and the results of such consultations.***

## Lithuania

### **Employment Service Convention, 1948 (No. 88) (ratification: 1994)**

1. *Contribution of the employment service to employment promotion.* The Committee notes with interest the detailed and comprehensive information contained in the Government's report, received in September 2006, in response to the Committee's 2005 direct request. The Government reports that, in 2000–05, labour exchanges led to the employment of 734,600 jobseekers, provided intermediation services in obtaining business licences for 84,900 unemployed persons, and involved 296,400 jobseekers in labour club activities. For the same period, 727,900 persons were involved in active labour market programmes –including 130,100 unemployed persons and persons that had received warnings of dismissal in professional development programmes, and 481,900 persons into employment support programmes.

2. The Government reports that the following five projects, financed by the European Social Fund, were prepared in 2004 and implemented in 2005: Development of Vocational Training of Unemployed Persons and Persons that have received Warnings of Dismissal; Support for Employment of the Unemployed; Labour Market Integration of Persons with Disabilities to Prevent Social Exclusion; Implementation of the Active Labour Market Policy Measures for Convicts and Persons Released from Imprisonment; and Building of Administrative Capacities at the National Labour Exchange. In this

regard, the Committee notes the Government's report that such projects have enabled the referral of an additional 10,700 unemployed persons to the active labour market programmes. *The Committee welcomes continuing to receive information on the activities of the National Labour Exchange, including such activities undertaken to address the specific needs of particular persons. Similarly, the Committee wishes to be kept informed of activities under technical cooperation projects aimed at improving access of jobseekers to employment.*

3. *Article 3 of the Convention. Development of employment offices throughout the territory.* The Committee notes that the National Labour Exchange is supported by 46 local (city and district) labour exchanges. The Government reports that the matter of establishing a regional level in the National Labour Exchange, or county labour exchanges, is under discussion, and if a regional level to the labour market institutions is formed, part of the functions performed by the national-level institution – namely, the National Labour Exchange, could be delegated to that level, creating conditions for the decentralization of labour market management. *The Committee would welcome being informed of the outcome of consideration on the feasibility of the establishment of regional-level labour exchanges, and of the provision made for the review, where necessary, of the network of employment offices to meet the changing requirements of the economy and the working population.*

4. *Article 4. Participation of social partners.* The Committee takes note of the information provided on the form and functions of the tripartite council established under the Ministry of Social Security and Labour. The Committee also notes that tripartite commissions are formed under the National Labour Exchange and the local labour exchanges for the consideration of issues related to the situation in the labour market and the implementation of labour market policy measures and services. *The Committee would welcome continuing to receive information on arrangements made through the tripartite council and commissions for the cooperation of employers' and workers' representatives in the organization and operation of the employment service and in the development of employment service policy, including information on the outcomes and recommendations made by such bodies.*

## Madagascar

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

1. *Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The Committee notes the Government's detailed report received in December 2006 and in particular Act No. 004-2005 on the National Employment Policy (PNE). It notes with interest that the PNE is intended to "promote full, productive and freely chosen employment" and that the "creation of decent jobs is the principal objective of sustainable and equitable economic growth to improve the living conditions of the population in the context of a labour market open to social dialogue" (sections 1 and 3 of Act No. 004-2005). It also notes that, with a view to the implementation of the PNE, a National Employment Support Programme (PNSE) has been formulated with the technical support of the ILO and was validated on 18 October 2006 in a tripartite national workshop, but that it still has not been adopted by Parliament. The Committee also notes, according to the information published by the International Monetary Fund (IMF) in February and July 2007 on the Poverty Reduction Strategy Paper, that Madagascar has prepared its second growth and poverty reduction strategy, entitled the Madagascar Action Plan (MAP) 2007–12. The Committee notes with interest that, as the MAP incorporates fully the PNSE, Madagascar has succeeded in integrating the operational approach of its national employment policy into its poverty reduction strategy. Noting in particular that emphasis is placed in Commitment No. 8 of the MAP on the importance of ensuring macroeconomic stability to achieve higher economic growth, the Committee recalls the importance of the role of macroeconomic policy in stimulating investment and employment. The Government indicates that, with a view to assessing the impact and effectiveness of the PNE in terms of its objectives and with a view to identifying new approaches and action in the context of open and dynamic national social dialogue, mechanisms to follow up and evaluate the PNE have been established, such as the holding of an employment conference every five years, technical assessments and evaluations and a broad national debate on the implementation of the PNE. The Government is currently working on the formulation of an institutional structure to monitor the overall implementation of the MAP (IMF report No. 07/240 of July 2007, paragraph 26). *The Committee requests the Government to provide information on the measures adopted to ensure that employment, as a key element of poverty reduction, is central to macroeconomic policy. It hopes that the National Employment Support Programme validated in October 2006 will be adopted at the national level in the near future so as to allow the effective implementation of the National Employment Policy with a view to "promoting full, productive and freely chosen employment". The Committee also requests the Government to provide detailed information on the evaluation of the employment policies and programmes implemented, such as the PNSE and MAP, with an indication of the extent to which the initial objectives have been achieved.*

2. *Labour market policies.* The Committee notes that the labour market is characterized by the inadequate match between education and employment needs. While the active population consists of 64.6 per cent of the total population, some 13.4 per cent of active persons are in the formal sector. Although the unemployment rate is relatively low, the underemployment rate remains significantly high (IMF report No. 07/09 of February 2007). The Government indicates that the situation of young persons on the labour market is a matter of great concern, as they are more exposed to unemployment, underemployment and low quality jobs, and that the participation by women in all sectors of activity remains highly inadequate. The Committee notes that the PNE is intended to facilitate the access of vulnerable social

groups (young persons, women and workers with disabilities) to the employment market (section 11 of Act No. 04-2005). In this respect, it notes with interest that the Ministry of the Public Service, Labour and Social Legislation is currently working with UNDP to assist in the implementation of the PNE in relation to the insertion or reinsertion of young persons and women into the labour market. ***The Committee requests the Government to provide information on the measures adopted to balance the supply and demand for labour and to meet the needs of specific categories of workers, with particular reference to women and young persons, with an indication of the results achieved in terms of job creation.***

3. *Collection and utilization of employment data.* The Government emphasizes the need to establish a real employment observatory which responds to the structural imperatives arising out of the implementation of a National Employment Policy. It refers in this respect to the National Employment Information System (SNIE) intended to make use of a new system for the processing of data with a view to promoting employment (sections 14 and 26 of Act No. 04-2005). The Committee notes with interest that the Government is currently formulating a National Statistical Development Strategy (SNDS) with a view to reinforcing statistical capacities, coordinating and rationalizing the statistical system, improving the quality of statistics, improving access to and the utilization of data for policy formulation, updating the legal framework and coordinating external assistance. The implementation of the SNDS is a key priority (IMF report No. 07/240, paragraph 27). ***The Committee requests the Government to indicate in its next report the progress achieved in the collection of employment data, particularly in the context of the implementation of the National Statistical Development Strategy, with an indication of the employment policy measures adopted as a result of the National Employment Information System.***

4. *Article 3. Participation of the social partners in the formulation and implementation of policies.* The Government indicates that the institutionalization of social dialogue as a permanent process of concerted action between the social partners on employment problems is a significant step forward, even though the impact and scope of social dialogue are still currently relatively limited. The Committee notes that the National Employment Council (CNE), an advisory body for dialogue and negotiation between the social partners, has been designated as the body to orient and guide the PNSE. It also notes that a National Monitoring Committee for the Promotion of Employment and Poverty Reduction (CNSPERP), which includes the social partners in its composition, was established in 2005 and that several consultations were held in this framework in 2006, both at the national and regional levels, with a view to discussing the content and implementation of the PNSE. The Committee notes with interest that the CNSPERP has received training from the ILO in August 2006 with a view to influencing national poverty reduction strategies and policies. ***The Committee requests the Government to describe examples of the consultations held with the social partners, particularly in the context of the CNE and the CNSPERP, in the fields covered by the Convention, with an indication of the views 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 the persons affected, including those working 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 formulation and implementation of employment policies.***

5. *Part V of the report form. ILO technical assistance.* The Committee notes the information on the technical assistance received from the ILO, and particularly the close collaboration of the Ministry of Labour and the social partners with the ILO in the formulation of the PNE and the PNSE. ***The Committee requests the Government to continue supplying information on the action taken as a result of the technical assistance received from the ILO with a view to ensuring the implementation of an active employment policy within the meaning of the Convention.***

## Mozambique

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1996)***

The Committee takes note of the information contained in the Government's report, received in October 2006, in reply to its previous comments.

1. *Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The Committee notes the adoption of a National Employment and Occupational Training Strategy, in the first half of 2006, in order to address rising unemployment. The National Strategy seeks to promote short and medium-term employment growth, in order to encourage the development of a pro-employment economy. It seeks to respond to job market demands through an approach which promotes active employment measures, making occupational training a priority, as a means to increasing employability of citizens, thus preparing jobseekers to meet the requirements of the job market. The Committee notes that the strategy is developed to provide support for increased efficiency and effectiveness of public and private employment centres; enhance youth occupational training programmes; support self-employment through the creation of small and micro-enterprises; promote private sector occupational training schemes; and strengthen social dialogue and inclusion of populations facing difficulties regarding integration owing to social factors. The Government also reports that for the first half of 2006, unemployment continued to rise, and that the Nampula, Sofala and Maputo provinces recorded high levels of unemployment.

2. The Committee similarly notes that the Government adopted an Action Plan for the Reduction of Absolute Poverty for 2006–09 (PARPA II) which centres its attention on raising the low standard of living of the least favoured

population groups whose current situation corresponds to “absolute poverty”. In particular, PARPA II focuses on district-based development, the creation of an environment favourable to growth of the productive sector, improvement of the financial system, measures to help small and medium-sized companies to flourish in the formal sector, and the development of the internal revenue collection system, and the methods of allocating budgeted funds. As part of the PARPA II, the Government seeks to coordinate specific initiatives aimed at job creation, as a means of helping income generation and reduce absolute poverty, through, inter alia, promoting the employment dimension in all sectoral policies, programmes and projects, thereby assuring widespread adoption of a pro-employment economy in the battle against absolute poverty; making its contribution to job creation, especially through associations of producers; follow-up and monitoring of production activities undertaken by associations and cooperatives; identification of employment opportunities for newly graduated young people, and promotion of the hiring of such candidates for employment; and gathering statistics on employment/unemployment that are both reliable and current. **The Committee asks the Government to provide in its next report, information on the results of the implementation of the National Employment and Occupational Training Strategy and PARPA II, with particular regard to employment generation. It also hopes that the information contained in the next report on active employment policy measures implemented by the Government, will enable the Committee to examine the extent to which economic growth translates into creation of lasting employment and poverty reduction.**

3. *Article 2(a). Collection and use of employment data.* The Committee notes that, in addition to the statistic-related activities set forth in PARPA II, a study on the workforce has been completed, and a new Labour Statistics Bulletin was launched, containing data on recorded unemployment, labour disputes, social security contributors, beneficiaries, occupational training and other labour-related information. **The Committee appreciates the Government’s efforts to provide statistics on the situation and trends on employment, and asks the Government to provide more detailed statistics on such, and other trends of the labour market, and to specify how these statistics are used in deciding on, and reviewing, employment policy measures.**

4. *Education and vocational training.* The Committee notes that the Government has sought to achieve a progressive and sustained expansion of employment and training structures in Mozambique, including through the signing of a Memorandum of Understanding with China for the construction of three regional occupational training centres in Maputo, Sofala and Nampula provinces. The Government reports that 1,509 unemployed individuals signed up at the employment centres to participate in training programmes for the unemployed, comprising 75 per cent of the Government’s target. Some 699 candidates were trained at occupational training centres in various specialized skills, which comprised 27.2 per cent of the Government’s original target. **The Committee asks the Government to provide further information on measures taken to improve the accessibility of the educational and vocational training programmes, and on any measures developed to coordinate education and training policies with prospective employment opportunities.**

5. *Support to small-sized and micro-enterprises.* The Committee notes that two new agencies of the Mozambique Credit Company (SOCREMO) were opened to provide financial assistance to small-scale self-employment projects. To this end, 17,773 small-sized and micro-enterprises received financing from SOCREMO in 2005. Furthermore, the Government reports that a funding committee of the Association for the Development of Local Entrepreneurs was established in Nampula, and that financial support and assistance was provided for the implementation of 54 self-employment projects. **The Committee asks the Government to continue providing such information on the measures taken to improve the legislative and regulatory bases for small and medium-sized enterprises as well as on efforts made to shift activities from the informal economy to the formal economy. The Government may deem it useful to consult the provisions of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).**

6. *Article 3. Participation of social partners in the formulation and application of policies.* The Committee notes that provincial seminars have been organized to consider the preliminary draft revision of the Labour Act, with the aim of consulting with the representatives of employers, workers and civil associations, in order to gather contributions allowing for the development of a consensus within the Tripartite Committee on the Revision of the Labour Act. **The Committee would welcome receiving information on the activities of such tripartite bodies in the formulation of active employment policies, and the involvement of social partners in the application of these policies. Please also indicate the measures taken or contemplated to involve, in the consultations required by the Convention, not only the employers’ and workers’ representatives but also representatives of other sectors of the active population, such as persons working in the rural sector or in the informal economy.**

## Netherlands

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

1. The Committee notes the information contained in the Government’s report for the period ending June 2006, which includes the *National Reform Programme for the Netherlands 2005–08* and a memorandum explaining how the social partners contributed to the National Reform Programme (NRP). It also notes the comments included in the Government’s report formulated by the Trade Union Federation for Middle and Higher Level Employees (MHP).

2. *Articles 1 and 2 of the Convention. Labour market and employment policy.* The Government indicated in its report that the economic growth rate has been below the EU average, however, an increase from 2.75 to 3 per cent was predicted for 2006 and 2007. The unemployment rate rose to 6.5 per cent in 2005, but this was expected to fall to 6 per cent in 2006 and 5 per cent in 2007. The main priorities of the NRP were to increase labour participation (in particular that of older, women and immigrant workers), to have moderate wage increases and to increase labour productivity. ***As already requested in its 2005 observation, the Committee would appreciate receiving the results of the evaluation done by the Government and the social partners on the difficulties encountered and the results obtained with respect to the employment policy orientations included in the NRP.***

3. In this regard, the Committee recalls the concerns expressed by the Netherlands Trade Union Confederation (FNV) with regard to the impact on the labour market of the early retirement and pre-pension measures introduced by the Government. In its report, the Government indicates that measures to achieve the goals set out in the NRP included the reform of the Unemployment Insurance Act (WW) to encourage unemployed persons to find a new job quickly by shortening the duration of the entitlement to the benefit, in particular for older workers. It also created financial incentives to prevent older workers from becoming unemployed and to stimulate employers to invest in their employability by recovering up to 30 per cent of the WW expenses from the former employer. These measures were implemented on 1 October 2006. ***In this respect, the Committee asks the Government to include in its next report detailed information on the impact of the reform of the WW and other measures taken to activate and improve labour market dynamics have had on promoting the re-entry into the labour market of unemployed persons (Articles 1 and 2 of the Convention).***

4. The Government indicates that an agreement had been reached with the social partners with respect to introducing modest wage increases in order to increase competitiveness in the global market. A 0.8 per cent wage increase was agreed for 2005. ***The Committee would appreciate to continue receiving information on the efforts made by the Government and the social partners concerning the impact on employment creation of measures taken with regard to income and wages.***

5. *Youth employment.* The Government indicates that a number of young persons had been helped into employment thanks to the efforts of municipalities, the Centre for Work and Income, small and medium enterprise action teams and the Youth Unemployment Taskforce. The Taskforce aimed to create an extra 40,000 youth jobs by the end of 2007 and, in May 2006, the job counter stood at 30,000. The Government had earmarked €135 million to be spent on tackling youth unemployment and early school leaving through creating additional trainee and apprenticeship places and improving student counselling and support. ***The Committee asks the Government to continue providing up to date data on the impact such measures have had in overcoming the difficulties in finding lasting employment of young workers entering into the labour market.***

6. *Ethnic minorities.* The Government also reports that initiatives had been taken to counter negative images and discrimination against ethnic minorities in the labour market such as the development of guidelines for non-biased psychological tests and projects to encourage dialogue in workplaces. In addition, ten projects have been launched as part of the *Broad Initiative on Social Cohesion*, aimed at improving the position of ethnic minorities in the labour market. ***The Committee recalls that Convention No. 122 has a “critical role to play in combating poverty and promoting social cohesion” (paragraph 495 of its 2004 General Survey on promoting employment) and asks to be kept informed on the impact of the measures taken to promote productive employment for ethnic minorities.***

7. *Older workers.* In reply to previous comments, the Government indicates that it has decided to stop providing tax facilities for schemes aimed at pre-pension before the age of 65 as of January 2006. In addition, a “Grey Works” Steering Group was established in 2005 to promote the advantages of employing older workers. A temporary subsidy scheme to encourage age-awareness policy was also launched in 2005 and ran until 2007. ***In this connection, the Committee refers to point 3 of this observation and asks the Government to provide information on how effective the measures implemented have been in increasing the participation rate of older workers.***

8. *Article 3. Participation of the social partners.* The Committee notes the comments of the MPH indicating that, while the activation idea behind the reforms to the WW are shared by the Government and the social partners, the reform was based in part on the Government’s objective to economize, which – although acknowledged – the trade unions have never accepted as a necessity. ***The Committee recalls that the Convention asks governments to ensure that the workers’ and employers’ organizations as well as other interested groups are to be consulted “with a view to taking fully into account their experience and views”. It asks the Government to continue providing information on the manner in which the views of employers and workers and other affected groups are taken sufficiently into account in the development, implementation and review of employment policies and programmes.***

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1988)**

*Implementation of a national policy on vocational rehabilitation and employment of persons with disabilities.* In its 2005 observation, the Committee noted the comments by the Netherlands Trade Union Confederation (FNV) indicating that the provisions of the Work and Care Act and the Act on Structure of the Organization of Implementation in the area of Work and Income (SUWI Act) were not fully relevant to the application of the Convention. The Committee asked the Government to describe in detail the national policy on vocational rehabilitation and employment for workers with

disabilities including practical data on the achievements in promoting employment opportunities for persons with disabilities in the open labour market. In the report received in August 2007, the Government provided new information particularly relating to legislation which, in so far as they are relevant, relate mainly to self-employment of persons with disabilities. *Keeping in view that the object of the Convention is to enable a person with disabilities not only to retain but also to secure and advance in employment, the Committee therefore once again requests the Government to provide a report describing in detail the national policy on vocational rehabilitation and employment for workers with disabilities including practical data on the achievements in promoting employment opportunities for persons with disabilities in the open labour market, in particular for women workers with disabilities, as required by the Convention (Articles 2 and 3 of the Convention). The report should include detailed information on the efforts to achieve effective equality of treatment between men and women workers with disabilities and other workers (Article 4); the manner in which representative employers' and workers' organizations, as well as representative organizations of and for disabled persons are consulted on the implementation of the policy (Article 5); the vocational guidance and training, placement, employment and other related services provided to enable persons with disabilities to secure, retain and advance in employment (Article 7); the services provided for persons with disabilities without financial resources (Article 8); and the measures adopted in practice to ensure the availability of suitably qualified staff in the field of vocational rehabilitation (Article 9). Please also include information on the manner in which the Convention is applied including, for example, statistics, extracts from reports, studies and inquiries, concerning the matters covered by the Convention.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Aruba

### **Employment Policy Convention, 1964 (No. 122)**

1. *Article 1 of the Convention. Implementation of an active employment policy.* Further to its previous comments, the Committee notes the information contained in the report provided by the Government of Aruba for the period ending May 2005. The Government of Aruba indicates that changes following the reorganization of the renamed Department of Labour and Research came into effect in June 2004. During the restructuring process, no new policies or programmes have been introduced. However, a pilot project for the reintegration in the labour market of special categories of unemployed workers was completed. *The Committee recalls that Article 1 of the Convention states that it "shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment". It requests the Government of Aruba to provide a detailed report including information on how it keeps "under review, within the framework of a coordinated economic and social policy", the measures to be adopted for attaining the objectives of full and productive employment specified in the Convention.*

2. *Article 3. Participation of social partners in the formulation and implementation of policies.* The Government of Aruba indicates in its report that no new progress has been made to reactivate the Labour Ordinance Committee (COL) or to further develop the relationships with employers' or workers' organizations and that no consultation has taken place with respect to employment policies. *The Committee recalls that, under Article 3 of the Convention, the representatives of employers and workers must be consulted concerning employment policies "with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies". It asks the Government of Aruba to implement the consultations required by the Convention and to provide in its next report information on progress made towards ensuring full compliance with the Convention.*

## New Zealand

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1965)**

The Committee notes the Government's very comprehensive report received in December 2006, including replies to the 2004 observation, as well as the comments of the New Zealand Council of Trade Unions (NZCTU) and the corresponding reply by the Government.

1. *Articles 1 and 2 of the Convention. Labour market policies.* Strong economic growth in the year to December 2004 translated into employment growth of 3.4 per cent dropping slightly in the year to December 2005 to 2.8 per cent. As a result, the unemployment rate had dropped to a low of 3.6 per cent in the December 2005 quarter, creating a shortage in skills and labour, which the Government's new labour market and employment strategy – Better Work Working Better (BWVB) – aims to address. The primary outcome for BWVB is high-quality employment in productive and innovative industries, regions and businesses, that drives sustainable economic growth opportunities for all New Zealanders. The four goals are to achieve high levels of participation in high-quality, well-paid and diversified employment; a diverse, adaptable and highly skilled workforce; high-quality and productive workplaces, within an effective regulatory environment; and high-performing sector and regional labour markets. The policy integrates a number of social and economic indicators as a means of measuring progress towards the goals set out in the BWVB and identifies areas where more work is needed. In addition, following the publication of the *Achieving balanced lives and employment: What New Zealanders are saying about work-life balance* report, a three-year work programme was introduced to promote a better balance between paid work and life outside of work and, in partnership with employers, develop practical customized

work–life balance tools for the workplace. *The Committee asks the Government to keep providing in its next report information on the BWWB as well as the Work–Life Balance work programme. In particular, it notes with interest the use of social and economic indicators, included in the BWWB, and asks to be kept informed of the results of its new employment strategy.*

2. The Committee notes the detailed information that the Government provided in its report on education and training policies, including the Tertiary Education Strategy 2002–07. The Committee notes with interest the large investment (NZ\$57 million) the Government announced in its 2004 budget to be allocated to a number of initiatives assisting the transition of young people from education to the world of work. These include vocational counselling, enhancing vocational training through the Secondary Tertiary Alignment Resource (STAR) programme and through expanding the Modern Apprenticeships programme. It also takes note of initiatives taken to increase the employment opportunities to meet the needs of particular categories of workers including women, older workers and workers with disabilities. The Government indicated that some other groups continued to experience labour market disadvantage, in particular Maori, Pacific peoples and new immigrants, and that a range of targeted interventions had been undertaken focusing on improvements for these groups. *The Committee asks the Government to continue providing it with information on the measures it has taken in the area of education and training policies and their relation to employment policies. It also requests the Government to provide more information on initiatives taken to increase employment opportunities for Maori, Pacific peoples and new immigrants and the impact they have had on bridging the gap between the employment opportunities of these groups and the general population.*

3. The Committee notes the implementation of the Workplace Productivity Agenda (WPA) in November 2004 following the final report of the Workplace Productivity Working Group, which identified seven drivers for workplace productivity. The Committee notes that a stocktake of progress made in implementing the WPA was undertaken in December 2005. *The Committee would be interested in examining the results obtained in increasing workplace productivity and would appreciate if the Government could include data on these matters in its next report.*

4. *Article 3. Participation of the social partners in the formulation and application of policies.* The Committee takes note of the Government's statement that, as a general principle, it consults with those affected by employment policies and that the scope and level of consultation is tailored to the particular policy. The Government provides examples of consultations which include implementation of the WPA by the Workplace Productivity Working Group, a shared responsibility led by industry, business and unions with government support; continued consultations between the Government and the Public Service Association (PSA) under the Partnership for Quality agreement. The Work–Life Balance work programme was developed in response to key messages received through a wide range of public consultation on the matter. *In this regard, the Committee would appreciate continuing to receive information on the manner in which the Government seeks the views of employers' and workers' representatives as well as of other interested groups concerning all issues related to employment policies, in order to take fully into account their experience and views, to secure their full cooperation in formulating and to enlist support for such policies.*

## Nicaragua

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1981)**

1. *Adoption and implementation of an active employment policy within the framework of a coordinated economic and social policy.* The Committee notes the detailed information provided by the Government in its report received in September 2006. The Committee notes with interest that through Executive Decree No. 30-2006, of 1 May 2006, the Office of the President of the Republic approved the national employment policy noting the incorporation of the principles of international labour standards, and particularly those of Conventions Nos 100, 111 and 122. Among other important statements, it is considered a national priority to formulate a strategy for the generation of high-quality work, together with incentives for national and foreign private investment, and to develop a strategy for economic growth and poverty reduction. Measures will be taken to strengthen the system of public investment with a view to promoting a series of projects with a major impact on the living standards of the population and the economy in general in accordance with the objectives of the National Development Plan and the resources allocated for a more aggressive infrastructure investment programme with a view to promoting economic growth. *The Committee asks the Government to provide information in its next report on any difficulties encountered in the achievement of the employment objectives established in the National Development Plan, including updated quantitative information on the implementation and outcome of the programmes implemented to promote growth and economic development, raise living standards, meet the needs of the labour force and resolve the problem of unemployment and underemployment.*

2. *Coordination of employment policy and poverty reduction.* The Committee also notes with interest the Government's statement in its report that, following a long process of structural adjustment and fiscal discipline, in January 2004, Nicaragua was finally accorded the cancellation of over 80 per cent of its external debt through the Highly Indebted Poor Countries (HIPC) initiative in the context of the Strengthened Growth and Poverty Reduction Strategy (ERCERP 2001). The macroeconomic programme implemented by Nicaragua during the period 2002–05 contributed to national stability, with a growth rate of 5.1 per cent in 2004. Nevertheless, according to the information published by ECLAC in the *Preliminary overview of the economies of Latin America and the Caribbean 2006*, economic growth in

Nicaragua slowed slightly from 4.0 per cent in 2005 to 3.7 per cent in 2006, owing to the decrease of domestic demand, although this was partly offset by a strong increase in exports. Indeed, exports of goods grew by 24 per cent due to a good harvest and improved international prices for some of the main traditional exports and the buoyancy of exports from export processing zones, especially *maquila* textile products. According to the statistics available in the ILO, the overall unemployment rate has fallen, reaching 7 per cent in 2005. However, informal work has not decreased and in 2005 was at the level of 58.8 per cent. ***The Committee once again expresses interest in continuing to receive information on the manner in which it is ensured that employment takes on central importance in macroeconomic and social policies through the formulation and implementation of the national strategy for poverty reduction and the promotion of decent work. The Committee asks the Government to continue providing information in its next report on the situation, level and trends of employment, unemployment and underemployment with an indication of the extent to which they affect the most vulnerable categories (women, young persons, older workers, workers with disabilities, workers in rural areas and in the informal economy) and, in particular, of the contribution of export processing zones to the creation of lasting and high-quality employment.***

3. *Part V of the report form. ILO technical cooperation.* The Government provides information in its report on the meetings held in the framework of the Central American Integration System (SICA) with a view to addressing the subject of employment in a consensual and tripartite manner and establishing a closer linkage between social and economic matters. ***The Committee asks the Government to continue providing information on the subregional initiatives undertaken with ILO support to promote the objectives of the creation of productive employment as set out in the Convention.***

4. *Article 3. Participation of the social partners in policy formulation and implementation.* The Committee notes with interest the indication in the National Employment Plan that “the Government will support the strengthening of unions and employers’ organizations and the development of bipartite and tripartite social dialogue bodies for a concerted approach to labour, employment and decent work policies, both within the spirit of ILO Convention No. 144 on tripartite consultations and in the national constitutional and legal framework”. ***The Committee welcomes the approach adopted and requests the Government to provide information in its next report on the manner in which matters relating to employment policy have been addressed in the National Labour Council. The Committee also invites the Government to consider the manner in which the consultations required by the Convention may include the representatives of the most vulnerable categories of the population, and particularly representatives of workers in the rural sector and the informal economy, when formulating and seeking support for the implementation of employment policy programmes and measures.***

## Peru

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

1. *Articles 1 and 2 of the Convention. Coordination of employment policy with economic and social policy.* The Committee notes the Government’s report, received in October 2006, which contains useful information in response to its direct request of 2004. Growth in employment in Metropolitan Lima reached 6.6 per cent, while the other 20 main cities reported an 8.0 per cent increase. According to the statistics published by the ILO in the 2006 Labour Overview, the rate of urban unemployment in Lima fell from 9.6 per cent in 2005 to 8.8 per cent in the third quarter of 2006, despite there being a substantial variation between men and women (10.3 per cent for women; 7.6 per cent for men). In 2006, the urban youth unemployment rate also fell (15.1 per cent) by one percentage point. ***The Committee requests the Government to include data in its next report on growth, employment, unemployment and underemployment in urban areas and rural areas.***

2. In this connection, the Committee notes the information supplied by the Government with respect to the positive performance of the economic sectors, especially mining and quarrying, services, industry, commerce, transport and communications, and electricity, gas and water. The Government refers in its report to the diagnosis of the Technical Secretariat of the National Council for Labour and Employment Promotion (CNTPE), which indicates that, despite 7.2 per cent growth in the Peruvian economy, economic growth is insufficient to absorb the labour supply, and a set of preliminary strategies has been drawn up for implementing the general features of the National Employment Plan. ***The Committee would be grateful to receive information on the outlines and specific strategies approved by the plan with the aim of promoting full, productive and freely chosen employment.***

3. *Promotion of employment and vulnerable groups.* The Committee notes the proposed policy designed to promote the integration of persons facing difficulties in returning to employment and the contingency plan for workers affected by the further economic liberalization, constant technological change and insufficient job creation. ***The Committee requests the Government to supply information in its next report on trends in this policy and its strategies, the results achieved and the vulnerable groups for whom these measures are intended.***

4. *Training policy and promotion of full employment.* The Committee notes the promulgation of Act No. 28518 on labour training methods in May 2005. ***With respect to the gap in training coverage and the inadequate resources in vocational training, the Committee requests the Government to supply information concerning the activities of the***

***Technical Committee on Vocational Training, the practical application of the new legislation and the progress achieved in equipping workers with the necessary skills and training for enhancing their employability.***

5. The Committee notes the approval of the National Plan for Promoting and Formalizing Competitiveness and Development in Micro- and Small Enterprises (MYPE) (2005–09). The National Employment Plan for 2006 concentrates on the micro- and small enterprise sector, in which most of the country's economically active population is to be found. According to the study on MYPE statistics published by the National Department for MYPE of the Ministry of Labour and Promotion of Employment (MTPE), the number of informal micro- and small enterprises is 1.8 million, compared with 648,147 enterprises in the formal sector. In general, poverty and employment in informal enterprises have a definite link, i.e. the greater the percentage of persons occupied in informal enterprises in an area, the greater the degree of poverty of its inhabitants. The Committee is aware that the informal economy constitutes a challenge for the creation of productive employment in the country – the informal economy represents 57.9 per cent of the economy in Peru, a percentage which is only exceeded in Bolivia (65.6 per cent). The Committee hopes that the Government's policies will stimulate the growth of formal micro-enterprises and that incentives will spur the formalization of informal enterprises. ***The Committee asks that the Government to supply information on the measures taken to increase employment opportunities, improve the conditions of work in the informal sector and facilitate the progressive integration of this sector into the national economy. Please include data on the results of the strategic components of the National Plan for Promoting and Formalizing Competitiveness and Development in Micro- and Small Enterprises for 2005–09, and in practical terms on the manner in which promoting the formalization and quality of informal employment translates into the generation of productive employment. The Committee also asks the Government to continue to supply statistics on the structure of the economically active population occupied in micro- and small enterprises and the geographical distribution thereof in both urban and rural areas.***

6. The Committee refers to the recommendations made by the ILO Subregional Office for the Andean Countries in the draft Decent Work Country Programme for 2004–06 of 18 December 2003, including the recommendation to strengthen and extend the public employment service which acts via the MTPE CIL-PROEMPLO network programme. ***The Committee requests the Government to provide information on the measures taken in this context not only to generate more jobs but also to improve the quality of work.***

7. The Committee notes the presentation of the operational plan for the agricultural and industrial sector drawn up by the National Employment Committee. ***The Committee would be grateful to receive information on the impact in economic and labour terms of the Agriculture Promotion Act which is being implemented by the Technical Secretariat of the CNTPE and on the sectoral policies for boosting job creation in the rural sector.***

8. *Article 3. Participation of the social partners.* The Committee notes with interest the activities undertaken by the National Council for Labour and Promotion of Employment (CNTPE) and the progress made by setting up a body to revise and debate draft policies or legislation with respect to employment and vocational training. ***The Committee asks the Government to supply information on the activities of the CNTPE and repeats its interest in examining information on the measures adopted for consulting the representatives of the informal economy with regard to the policies to be adopted in order to improve their prospects of obtaining decent work.***

## Philippines

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1976)***

1. In reply to the previous observation, the Committee notes the information provided in the Government's report for the period ending in August 2006.

2. *Coordination of employment policy with poverty reduction.* The Committee notes that the Government has adopted a unified policy framework to promote decent and productive employment as a means to alleviate poverty in the country and that this policy has been articulated in the Medium-Term Philippine Development Plan (2004–10). The Government also stated its aim to generate around 6–10 million jobs. ***The Committee asks the Government to provide further information on how the policy measures included in the Development Plan are implemented within a framework of a coordinated economic and social policy (Article 2(a) of the Convention). Please specify how the four major employment promotion strategies: employment generation, preservation, enhancement and facilitation are being executed and whether special difficulties have been encountered in attaining the objectives of the strategies announced. It further asks the Government to provide information on how the targeted economic growth will produce decent quality jobs, considering the magnitude of the informal economy in the country.***

3. According to the Bureau of Labor and Employment Statistics of the Department of Labor and Employment, the annual employment growth for 2006 was placed at 2 per cent (648,000 individuals), wage and salary employment rose by 2.9 per cent (474,000 individuals), unpaid family workers by 3.7 per cent (144,000 individuals) and self-employment by 0.2 per cent (29,000 individuals). In 2006, the number of part-time employees grew by 6.3 per cent (735,000 individuals) while the number of full-time employees decreased slightly (0.6 per cent or 131,000 individuals). One of the weaknesses of the labour market is the rise in underemployment in recent years. From 17.6 per cent in 2004, the underemployment rate rose sharply by 3.4 percentage points to reach 21 per cent in 2005. In 2006, it reached a level of 22.7 per cent. Underemployment increased by 682,000 to 7,467,000 individuals. Youth continued to account for the bulk of the

unemployed (49.1 per cent). Their unemployment rate at 17.6 per cent was more than twice the national figure. *The Committee asks the Government to keep it informed on the impact of the measures taken to provide lasting employment to young workers under the age of 26 years and first-time employment seekers. It would appreciate receiving in the next report updated information on the labour situation, level and trends of employment, unemployment, underemployment and developments in the labour market.*

4. *Coordination of training policies with employment opportunities.* The Committee notes that the Department of Labor and Employment conducted in March 2006 a national manpower summit to identify the required skills and competencies in order to overcome structural unemployment. *The Committee asks for further information regarding the follow-up action taken after the summit to ensure that the targeted job generation will be achieved. Please also provide information on the measures taken to coordinate education and training policies with prospective employment opportunities.*

5. *Article 3. Participation of social partners in the formulation and application of policies.* The Committee notes the development of the Decent Work National Plan of Action within the four basic principles of decent work which identified areas of consensus to pursue a common agenda, realign and harmonize areas of employment generation opportunities, elimination of poverty and social protection. *The Committee asks the Government to further elaborate in its next report the role that the social partners have had, in particular their role in developing and implementing the Decent Work Agenda concerning employment promotion policies and measures. It also requests information regarding the involvement of representatives of workers of the rural sector and the informal economy in the formulation and implementation of the employment measures.*

## Poland

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

The Committee notes the general information contained in the Government's report received in September 2006.

1. *Articles 1 and 2 of the Convention. Policies to promote employment.* The Committee notes from the data supplemented by the technical units of the Office that the employment rate is slowly continuing to climb to 54.5 per cent in 2006, an increase of 1.6 per cent since the last report. Despite continuing to be one of the highest in the Organisation for Economic Co-operation and Development, the unemployment rate slowly decreased to 14 per cent in 2006. However, gender gaps in unemployment continued to exist. While the unemployment rate also dropped significantly for the 15–24 age group (29.8 per cent in 2006), young persons continued to be the worst hit by unemployment. The Government reported that the basic employment policy objectives for 2005–06 were to increase labour demand; increase employment growth; reduce unemployment; strengthen active labour market policies; and invest in human capital development. These were to be implemented through the National Action Plan in Favour of Employment 2006 (KPDZ/2006), the KPDZ 2005 and the National Reform Programme 2005–08. The Committee notes the information provided by the Government concerning measures to be taken under the national plans to increase employment for youth, older workers and workers with disabilities. It also notes the improvements to institutional labour market services that are to be implemented by the Government through enhancing the quality of job placement services, vocational guidance services and services within the EURES network; increasing the quality of training services organizations; and supporting geographical and occupational mobility. *The Committee requests the Government to provide in its next report further detailed information on the impact of these measures, as well as measures referred to in previous comments, in particular whether these measures have had any impact on reducing the rate of unemployment, in particular for young workers, women workers and older workers. It would also appreciate detailed information on the effectiveness of reforms made in the employment services to increase their efficiency.*

2. *Article 3. Participation of the social partners in the formulation and application of policies.* The Committee notes that the scope of powers of the Supreme Employment Council has been expanded and covers pronouncing opinions on draft laws in the field of employment promotion and mitigating the effects of unemployment. *In this regard, the Committee asks the Government to continue to supply information on the manner in which representatives of the persons affected are consulted concerning employment policies, including information on the consultation held at the regional level on the matters covered by the Convention.*

## Portugal

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1981)**

1. *Articles 1 and 2 of the Convention. Employment trends and active labour market policies.* The Committee notes the Government's report for the period ending in May 2006 which contains observations from the Portuguese Confederation of Tourism and the General Union of Workers (UGT). According to the UGT, unemployment has been rising since 2004, reaching 8 per cent in 2005. Industrial jobs have been lost because of bankruptcies, restructuring and delocalization. The Government states that the National Employment Plan 2005–08 (PNE) is an integral part of the National Action Programme for Growth and Employment (PNACE), which ensures coordination of the various programmes and action plans that affect growth and employment. The PNACE aims to increase economic growth and job

creation through coordinated and coherent macroeconomic measures (consolidation of public finances, modernization of the administration), microeconomic measures (technology plan to encourage innovation) and measures in the area of employment and qualifications. Under the PNE, in 2005 the Government launched the initiative *Novas Oportunidades*, as a means of increasing the secondary school enrolment rate and improving youth and adult qualifications. In the area of qualifications, employment and social cohesion, the objectives of the PNACE include promoting job creation, and attracting more people to, and keeping them in, employment by forestalling and combating unemployment, particularly youth and long-term employment. The Committee further notes that flexibility with job security is to be promoted in the context of strengthened social dialogue and consultation. ***The Committee asks the Government in its next report to provide information on the manner in which the PNACE employment objectives have been obtained and on the results of the measures to reduce the number of long-term unemployed and improve the efficiency of the employment services. The Committee asks that the report also contain information on the manner in which the Government has consulted the social partners in adopting the abovementioned measures.***

2. *Measures to promote employment among certain categories of workers.* The UGT states that there are still significant inequalities between men and women in the labour market and that youth unemployment is still high (16.4 per cent). The Government states that it is planning to set up special employment programmes for groups of the active population that are particularly disadvantaged in the labour market, such as young people, older workers, persons with disabilities, socially excluded groups or groups liable to social exclusion, and immigrants, together with region- or sector-based programmes as required. ***The Committee requests the Government to provide information on any programmes under implementation to promote employment among these special categories of workers, and on the results obtained in terms of job creation.***

3. *Article 3. Participation of the social partners in the framing and implementing of policies.* In its report, the Government refers to two agreements concluded with the social partners: the agreement of 7 January 2005 to reinvigorate collective bargaining and the agreement of 8 February 2006 on vocational training. ***The Committee requests the Government to provide detailed information in its next report on the tripartite consultations that have been held on employment policy as required by the Convention.***

## Russian Federation

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1967)***

1. The Committee notes the Government's report received in January 2007 containing information related to Conventions Nos 111, 122 and 156. In April 2007, the Office requested the Government to provide further replies to some issues raised by the Committee's observation in 2006. The Committee observes that the information provided by the Government in its report primarily deals with measures taken to promote the employment of women. ***The Committee accordingly 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, paragraph (a), of the Convention). In this regard, the Committee also requests the Government to provide information on the following matters.***

2. *Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee understands from the statistics gathered by the ILO labour survey that the unemployment rate remained constant between 2005 and 2006 at 7.2 per cent. The unemployment level of men rose from 7.3 to 7.5 per cent during this period, whereas the unemployment level for women declined from 7 to 6.8 per cent. In this regard, the Committee also notes that the economically active population of the Russian Federation fell from 142,754 million persons in 2005 to 142,487 million in 2006, representing a decline of 267,000 persons. ***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.***

3. The Government indicates in its report that the main goal of the Russian Federation's social policy in 2005 was to achieve a consistent rise in people's standards of living and quality of life, ensuring general accessibility of basic social services, primarily high-quality health-care provisions, social services and employment. The Committee understands that the Russian Federation's medium-term social and economic development programme (2006–08) sets the reform of sectors, relevant to the development of human capital, primarily education and health, as absolute priorities. This thus seeks to enhance the effectiveness of the programme in the fields of social policy and improve existing mechanisms for providing social assistance (part I of the programme of cooperation between the ILO and the Russian Federation, 2006–09). ***The Committee requests that the Government provide information on the results of the implementation of the social and economic development programme on employment generation. In this regard, the Committee further reiterates its requests for information on how employment policy measures are reviewed regularly within the framework of a coordinated economic and social policy. The Committee again requests 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.***

4. *Article 3. Participation of the social partners in the formulation and the implementation of policies.* The Committee recalls that *Article 3* of the Convention calls for consultations with all the persons affected and, in particular, the representatives of employers and workers, in the formulation and implementation of employment policies. It is the joint responsibility of governments 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 (see paragraph 493 of the General Survey of 2004 on promoting employment). **The Committee trusts that the Government will supply detailed information on this matter in its next report.**

5. *Part V of the report form. ILO technical cooperation.* The Committee notes that the programme of cooperation between the ILO and the Russian Federation 2006–09 also provides that improvements to employment policy must be based on changes to the approaches to social policy, that is, policy designed to achieve employment and human resources development as the goals and not as a mere consequence of overall economic policy. **The Committee would be grateful if the Government would provide information in its next report on the initiatives undertaken with ILO support to promote the objective of the creation of productive employment as set out in the Convention.**

6. Finally, the Committee recalls that the preparation of a detailed report, including replies to the issues raised in this observation will undoubtedly allow the Government and the social partners to assess the achievement of the objective of full productive employment stipulated by 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. It 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.**

[The Government is asked to reply in detail to the present comments in 2008.]

## Sao Tome and Principe

### **Employment Service Convention, 1948 (No. 88) (ratification: 1982)**

1. *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).**

2. *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.

3. 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.

## Senegal

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1962)**

1. *Part III of the Convention. Articles 10 to 14. Regulation of fee-charging employment agencies.* The Committee notes the Government's report received in October 2006, the observations made by the National Confederation of Employers of Senegal (CNES) and the National Confederation of Workers of Senegal (CNTS) on the application of the Convention received in November 2006, and the Government's reply, which refers to the information contained in its report. The CNTS has said that the Government has to acknowledge that the slowness in establishing rules governing the operation of employment agencies, in particular defining the obligations of employers and providing for protection of workers, is resulting in multiple abuses, and that the Government should indicate the measures that it is planning to take in this respect. The Committee notes that, in reply to its previous comments, the Government states that under section L226 of the Labour Code it has initiated a procedure for the adoption of a decree to define the obligations of employment enterprises and the protection of workers employed by temporary work enterprises. ***Noting the Government's statement that a copy of the decree will be provided when it has been adopted, the Committee trusts that regulations on fee-charging employment agencies will be adopted in the near future and 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.***

2. *Part V of the report form. Information on the application of the Convention in practice.* The Government indicates that, due to the absence of a clear legal framework, no information can be provided on the application of the Convention, but that it will be in a position to provide all the necessary information in this respect once the above decree has been adopted under section L226 of the Labour Code. ***The Committee trusts that the Government's next report will contain appropriate information on the manner in which the Convention is applied in practice including, for instance, extracts from official reports.***

3. *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 refers in this respect to the information provided in June 2007 on the submission of Convention No. 181 to the Council of Ministers. The Government has said that, as the application of Convention No. 96 has not been satisfactory, the ratification of Convention No. 181, which revised Convention No. 96, would not be appropriate, but that the Private Employment Agencies Recommendation, 1997 (No. 188), will serve as a source of inspiration for the formulation of new employment rules. ***The Committee recalls that Convention No. 181, which takes into account the flexibility in the operation of labour markets, is now the latest standard on the role and operation of private employment agencies and, because of the admittedly unsatisfactory application of Convention No. 96, it 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)**

1. *Articles 1 and 2 of the Convention. Coordination of employment policy and poverty reduction.* The Committee notes the Government's report for the period ending September 2006, the observations of the National Union of Autonomous Trade Unions of Senegal (UNSAS) and the Government's reply received in October 2006. The Government indicates 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 notes with interest the Growth and Poverty Reduction Strategy Paper (GPRSP) 2006–10, of October 2006, which indicates that the principal problem of the employment market is visible underemployment, which is at the rate of 21.8 per cent of the population (or 1,002,372 active persons). The Government reports that it has formulated in a participatory manner a new national employment policy (PNE), which is currently being validated. In this respect, the Committee notes 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 emphasizes the importance of ensuring that employment, as a key component of poverty reduction, is central to macroeconomic and social policies. It 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 measure implemented to promote full, productive and freely chosen employment.***

2. *Compilation and utilization of employment data.* The Government indicates 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 notes with interest 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 UNSAS reports 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 National Observatory of Employment and Vocational Skills.***

3. *Article 3. Participation of the social partners in the design and formulation of policies.* In reply to the comments of the UNSAS, the Government emphasizes 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 indicates 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.***

4. *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.

## Slovakia

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1993)***

1. *Articles 1 and 2 of the Convention. Labour market trends and employment policy.* The Committee takes note of the detailed information contained in the Government's report, received in November 2006, in response to previous comments. The Government indicates that the economy continued to grow strongly resulting in an increase in the number of enterprises (12.8 per cent increase) and non-profit organizations (7.5 per cent) in 2005. As a result, the unemployment rate continued to decline; the rate of registered unemployment decreased to 9.8 per cent by 31 October 2006. Under the "National Action Plan of Employment for the years 2004–06", the Government had undertaken a large number of active labour market measures to try and achieve the three general objectives of full employment; increased quality and productivity of labour; and strengthening social cohesion and inclusion, set out in the plan. In total, the use of active labour policy instruments assisted 239,921 persons into employment in 2005, of which 62 per cent were long-term unemployed persons. Youth unemployment rate, despite having declined since the Government's last report in 2004, was still among the highest in the Organisation for Economic Co-operation and Development (OECD) member countries (26.6 per cent in 2006). In addition, according to an OECD report "Jobs for Youth: The Slovak Republic", almost 60 per cent of registered unemployed persons aged between 15 and 24 had been looking for employment for more than a year. As indicated by the Government, a major problem in entering into employment was that jobseekers did not have the necessary qualifications to fill available job vacancies. In addition, despite all regions reporting decreasing numbers of applicants for employment and rates of registered unemployment in 2005, there was still a large disparity between the unemployment rate in Bratislava (2.86 per cent) and the other regions, in particular Banská Bystrica (18.18 per cent), Prešov (16.08 per cent) and Košice (17.95 per cent). The Committee recalls that, as required by Convention No. 122, employment creation is linked to the successful coordination of macroeconomic policies as well as structural policies. ***It asks the Government to supply information in its next report on the impact of the measures undertaken to tackle regional disparities and structural unemployment specifically on the measures taken to provide lasting employment to young workers under the age of 26 years and first time employment seekers. It also requests to include information on the impact of the measures implemented to ensure that educational and life-long learning policies are coordinated with prospective employment opportunities.***

2. *Roma minority.* The Committee notes the activities carried out under the National Action Plan for Social Inclusion 2004–06 which was adopted to address the exclusion of the Roma community. The Government reports that, with the assistance of various Government projects, 3,000 jobs were created in 2005 for the placement of the Roma population into employment and that 6,000 further jobs were anticipated to be created in 2006. ***In this regard, the Committee refers to its observation on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and requests the Government to continue to report on the activities of its National Action Plan, and related measures, to promote productive employment of the Roma population.***

3. *Article 3. Participation of the social partners in the formulation and application of policies.* The Committee notes the Government's statement indicating that the social partners participated in the elaboration of the National Action Plan of Employment for the years 2004–06 and that their comments were taken into account. The Committee recalls its previous observation and, in particular, that in June 2004 the Conference Committee had urged the Government to renew its efforts to strengthen social dialogue on employment policy, as the participation of the social partners in the formulation of employment policy and in securing support for the achievement of the objective of full employment was an essential requirement of this priority Convention. *Article 3* of the Convention provides that the measures to be taken in relation to employment policy should take fully into account the experience and views of the representatives of employers' and workers' organizations with a view to securing their full cooperation in formulating and implementing employment policies. Governments and representative organizations of employers and workers share responsibility for ensuring that representatives of the more vulnerable or 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 (see General Survey of 2004 on promoting employment, paragraph 493). ***The Committee asks again the Government to provide indications in its next report on the progress made in involving the social partners in order to ensure that the objectives of the Convention are being achieved. Please also indicate the manner in which the opinions of the representatives of persons affected by the employment policy measures, including the opinions of representatives of the Roma population, have been taken into account with regard to the employment policy measures designed for disadvantaged jobseekers.***

## Spain

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1970)***

1. *Articles 1, 2 and 3 of the Convention. Employment strategy and trends.* The Committee notes the Government's report for the period ending June 2006 and the very detailed description of the legal provisions adopted during that period with a view to promoting full, productive and freely chosen employment. The Committee notes that an active employment policy continues to be implemented within the context of the European Employment Strategy as part of the National Reform Programme. This programme sets the objective of achieving an employment rate of 66 per cent by 2010, which is one point higher than the current European average. The first objective of the Declaration for Social Dialogue "Competitiveness, stable employment and social cohesion", signed on 8 July 2004, was the reduction of precarious employment. In the agreement to improve growth and employment, signed by the Government and the social partners on 9 May 2006, there is an enumeration, in the first place, of measures intended to encourage and support employment, permanent contracts and the conversion of temporary employment into permanent employment through the provision of incentives and encouragement for new permanent contracts and the reduction of employers' contributions to the Wage Guarantee Fund and for unemployment. Secondly, the agreement includes measures to restrict the successive use of temporary contracts, and to introduce greater transparency into the subcontracting of works and services between enterprises when they share the same workplace. The strengthening of the human and material resources of the Labour and Social Security Inspectorate is also envisaged, with emphasis being placed on the participation of the social partners in the determination of its objectives and programmes. Thirdly, measures have been agreed upon, in the first place, to improve the effectiveness of the active employment and activation policies of the national employment system and, in addition, to improve the protection of workers against unemployment, both through unemployment protection and the benefits of the Wage Guarantee Fund. ***The Committee notes with interest that the objectives of full and productive employment referred to in the information provided by the Government in its report are fundamental objectives of tripartite agreements. The Committee would be grateful to continue receiving information on the results achieved in the implementation of Law No. 43/2006, of 29 December, to improve growth and employment, and on the experience of the social partners in relation to the application of the Convention.***

2. *Labour market policies.* Regional disparities in employment and unemployment rates continue to attract attention, with high rates of unemployment and lower employment rates occurring in the South and West, in comparison with the more favourable situation in the North East and Centre with regard to employment, unemployment and wages. In this duality, Asturias has the lowest employment rate (43.2 per cent) and Ceuta and Melilla the highest unemployment rates (17.1 per cent). ***The Committee requests the Government to continue providing information on the results achieved through the measures adopted to improve territorial cohesion and reduce the differences between regions, including data on the active employment measures adopted by the autonomous communities.***

3. The Committee notes that for the second successive year the unemployment rate has fallen, and that it was 9.2 per cent in 2005. Although the unemployment rate for young persons has fallen by 2.4 points in relation to 2004, it is still 19.7 per cent and young persons continue to be an underprivileged category requiring action to increase their capacity for vocational integration and to improve their employability. The participation rate of women has increased by 7.8 per cent and that of men by 4.2 per cent, although the employment rate of women is lower than the European average and their employment conditions continue to be worse than those of men. Furthermore, according to the data supplied by the Government, the incidence of long-term unemployment among unemployed men is 24.5 per cent, while the figure for women is 32.5 per cent. ***The Committee asks to continue being provided with information on the measures that are***

*being taken and their results in improving the participation rate and the employability conditions for young persons and women.*

4. The Committee notes that the long-term unemployed are one of the categories towards which efforts are being directed (553,400 persons in 2005), especially through training to improve their employment opportunities. ***The Committee requests the Government to continue providing information on the measures adopted and the results achieved in reducing the level of long-term unemployment.***

5. The Committee notes the measures that have been taken by the Government to regularize the situation of foreign workers residing in Spain, with a consequent increase in the number of persons covered by the social security system. The process for the legalization of foreign workers involved the registration, as of 31 December 2005, of 465,961 foreign nationals. In 2006, the number of new foreign workers registered amounted to 601,025 new persons being covered. ***The Committee requests the Government to continue providing information on the measures adopted to ensure that foreign workers are integrated into the labour market and that they obtain stable and productive employment.***

## Sudan

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

1. The Committee notes with regret that it has not received the Government's report since the very brief November 2004 communication. ***The Committee asks the Government to provide a detailed report on the application of the Convention containing up to date and precise information and replying to its 2005 observation, which raised the following matters.***

2. *Articles 1 and 2 of the Convention. Policies to promote employment and coordination with poverty reduction.* The Government indicated that it had under consideration a programme for the period 2005–06 to combat unemployment with special reference to university graduates, and listed the main elements of that programme. The Government also indicated that it was in the process of preparing, with the assistance of the ILO, the Poverty Reduction Strategy Paper. ***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. Furthermore, the Committee emphasizes the importance of establishing a system for compilation of labour market data and requests the Government to inform it of any progress made in this field and 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). The Committee also asks the Government to inform it of the status of the Poverty Reduction Strategy Paper as well as any evaluation on the impact of its programme to combat unemployment focusing on university graduates.***

3. *Article 3. Participation of the social partners in the formulation and application of policies.* 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 (see paragraph 493 of the General Survey of 2004 on promoting employment). ***The Committee trusts that the Government will provide detailed information in this respect in its next report.***

4. *Part V of the report form. ILO technical assistance.* ***Furthermore, the Committee requests the Government to describe in its next report the actions taken to implement an active employment policy within the meaning of the Convention following the technical assistance received from the ILO.***

5. The Committee underlines that the preparation of a detailed report, including the information requested in this observation, will certainly provide the Government and the social partners with an opportunity to evaluate the achievements concerning the objective of full and productive employment laid down in the Convention.

## Tajikistan

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1993)**

The Committee notes that the Government's report has not been received. It must therefore repeat its 2006 observation which read as follows:

1. *Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee notes from the letter received on 19 October 2005 containing the Government's general report that a number of legal developments relevant to the application of the Convention have taken place since the Government submitted the last report in November 1996. The Committee refers to its 2003 observation and notes in particular the approval of a State Employment Programme in March 2002. However, to evaluate the application of this Convention, the Committee considers it necessary to refer to the Government's Poverty Reduction Strategy Paper: Second Progress Report (PRSP Report), which indicates that despite an increase in the number of employed persons in 2004 (more than 100,000), the overall employment policy remained undeveloped. The Committee recalls

the Government's goal set out in the PRSP prepared in 2002 of reaching 59 per cent employment by the year 2006. *It requests the Government to indicate in its next report whether special difficulties have been encountered in attaining the objectives of full, productive and freely chosen employment. It also asks for information on other measures, such as programmes or activities designed to promote employment, and the manner in which these initiatives are kept under review within the framework of a coordinated economic and social policy.*

2. *Regional inequality.* The Committee notes from the PRSP report that significant regional employment differences remain, with high concentrations of labour resources in the densely populated oblasts of Soghd and Khatlon. *It hopes the Government will provide details in its next report on how it intends to ensure balanced regional development with particular attention paid to reducing regional employment inequalities.*

3. *Employment services.* The PRSP report further indicates that the State Employment Service (SEC) held 193 job fairs across the country in 2004 involving 2,311 agencies and private companies. As a result of these fairs, 3,701 people received offers of employment, 2,951 joined paid public works programmes and 1,435 enrolled in vocational training. The work of the SEC is supplemented by the efforts of non-governmental and informal employment agencies, with local authorities establishing volunteer employment coordination committees. Yet, the PRSP report points out that the SEC by and large lacks the capacity to reach out to all unemployed people. *The Government is therefore asked to provide information in its next report on how it intends to strengthen the SEC in order to meet the needs of all unemployed persons, including vulnerable categories of workers such as women, young people, older workers and workers with disabilities.*

4. *Collection and use of employment data.* The Committee notes from the PRSP Report that the structure and dynamics of the labour market are not well understood and that the collection of unemployment data, for example, is difficult because not all unemployed persons register with the SEC. *In view of the high estimated number of informal workers in Tajikistan, the Government is asked to provide information in its next report on the efforts made to improve its capacity to assess the situation of and trends in employment, unemployment and underemployment, both in the formal and informal economy.*

5. *Article 3. Participation of the social partners in policy preparation and implementation.* *The Committee would be grateful to receive information in the next report on the consultations held with representatives of the social partners and on the implementation of employment policies, and in particular with representatives of the rural sector and the informal economy on the matters covered by the Convention.*

6. The Committee once again points out that the assistance of the Office is available to help the Government meet the reporting obligations and for the technical implementation of an active employment policy within the meaning of the Convention.

## Thailand

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1969)**

1. The Committee notes the information provided by the Government in April 2007, in reply to its previous observations.

2. *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 since 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, the Government decided in September 2006 to review its policies and extend social security coverage to the informal sector. Consequently, 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.*

3. *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” (Article 2, paragraph (a), of the Convention).* 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 notes these initiatives with interest and would welcome receiving information on labour market programmes implemented to match labour supply and demand so as to ensure that the categories of workers affected by such structural transformations and changes in international trade can enter and remain in the labour market.*

4. *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.*

5. *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 or 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 in June 2006 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 (see Part X of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)).*
- *Workers in the rural sector and in 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.*

6. *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.*

## Turkey

### **Employment Service Convention, 1948 (No. 88) (ratification: 1950)**

1. *Contribution of the employment service to employment promotion.* The Committee takes note of the information contained in the Government's report received in October 2006, in reply to the Committee's 2004 observation, and the detailed comments and supplementary information provided by the Turkish Confederation of Employer Associations (TİSK), annexed to the report. The Government reports that, over the course of the reporting period, the Turkish Employment Agency (İŞKUR) was restructured which, inter alia, provided for the creation of regional employment agencies in 81 regions. The Committee notes that TİSK considers that the restructuring of İŞKUR was an apt decision and that the duties undertaken by the agency will in time reach their goals. The Committee similarly observes that, in comments provided with respect to Convention No. 122, the Confederation of Turkish Trade Unions (TÜRK-İŞ) has remarked that İŞKUR is the only employment agency in Turkey that has made some advances in recent years, but that the resources available to make İŞKUR more effective and functional in the labour market are inadequate. ***The Committee notes with interest the abovementioned information and would welcome continuing to receive information on the activities İŞKUR has undertaken so that it might effectively carry out its functions under the Convention. Similarly, the Committee requests such information be supported by statistics on the number of jobseekers and employers which made use of İŞKUR's services, and the results of such activities in matching jobseekers and employers.***

2. *Article 4 of the Convention. Participation of social partners.* The Committee notes the information provided on the functions of the regional employment councils, and the methods by which representatives of social partners are designated to participate in these councils. The Committee also notes the information provided by TİSK on the establishment of the "Pilot Scheme for Improving Efficiency in Training and Employment", funded by the European Union, TİSK and TÜRK-İŞ, which aims to increase the efforts directed at the improvement of training and employment services, and seeks to reinforce the ties between training and employment. The Committee notes with interest that, under this scheme, 180 reports by the regional employment agencies were examined, focus group meetings were held between members of TİSK and TÜRK-İŞ, and a seminar was held for 200 representatives of TİSK, TÜRK-İŞ, the regional employment agencies, and other bodies and institutions. TİSK reports that, as well as being the first concrete project to be jointly implemented by the employee unions and the employer associations confederations for the development and implementation of social dialogue, the scheme is also being viewed as an attempt to have a tripartite dialogue with the participation of other representatives from the regional employment agency during the implementation phase. ***The Committee asks the Government to continue providing information on the operation of the regional employment councils and other advisory bodies, and the arrangements that have been made for the cooperation of employers and worker representatives in the organization and operation of employment service and in the development of employment service policy. In this regard, the Committee wishes to be kept informed of the activities and progress under the aforementioned pilot scheme.***

3. *Article 9. Status and training of employment service staff.* The Committee takes note of the information provided by the Government on the method by which staff of the employment service are recruited, and arrangements for the training of such employees. The Government reports that, in 2005, 1,638 İŞKUR employees underwent training, while efforts were being made to raise this figure in 2006, to 4,200 persons. ***The Committee asks the Government to continue to provide information on the stability, recruitment, training and skills of İŞKUR staff, and the results of efforts it has taken with respect to improving access of its employees to such training activities.***

4. *Article 11. Cooperation between the public employment service and private employment agencies not conducted with a view to profit.* The Committee notes with interest the information provided on the activities under the Project for Active Employment Programme (AIPP) which seeks to assist İŞKUR in developing a project for cooperation with private employment agencies. To this end, the Government reports that the project seeks to: (a) evaluate the results of the application of national legislation concerning private employment agencies within the framework of *Article 11* of the Convention; (b) define principles of cooperation between organizations which undertake similar activities; (c) support İŞKUR in work related to private employment agencies; (d) better use information and data provided by private employment agencies in determining the national employment policy; and (e) identify private employment agencies operation without authorization, and to exchange views as to the measures to be taken. The Committee similarly takes note of the recommendations formulated by, and the future work of, the task force, composed of representatives from the Turkish Employment Agency and the related private employment agencies, created under the framework of the aforementioned project. ***The Committee requests that the Government continue to report on efforts made to secure effective cooperation between the public employment services and the private employment agencies, and the outcomes of the aforementioned project.***

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1952)**

1. *Part III of the Convention. Regulation of fee-charging employment agencies.* The Committee notes with interest the information contained in the Government's report received in October 2006, in reply to its 2004 observation, and the detailed comments and supplementary information provided thereon by the Turkish Confederation of Employer

Associations (TİSK), and the brief statement of the Confederation of Public Servants' Trade Unions (MEMUR-SEN). The Committee recalls that, under the Turkish Employment Agency Law, private employment agencies may be involved in the activity of finding employment or employees, on condition that they have been selected and given permission within the framework of specified requirements by the Turkish Employment Agency (İŞKUR). In response to the Committee's observation in 2004, requesting up to date statistical data on the activities of private employment agencies, the Government reports that the 175 private employment offices were inspected by İŞKUR, of which 53 administrative fines were issued for unlicensed activities by private employment agencies. Between 2004 and 2006, 157 applications were received by the İŞKUR, for licences to operate as private employment agencies. Of these applications, 153 were allowed and licences were granted to them to operate. ***The Committee would appreciate continuing to receive information in the Government's next report on the practical 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 the Convention (Article 14 of the Convention, and Parts IV and V of the report form).***

2. The Committee also notes that a "Project of Operating and Auditing of Private Employment Offices" was launched in April 2005 by the Labour Inspection Board, with the cooperation of the European Union's Administrative Cooperation Fund, which provides, inter alia, for the improvement and harmonization of the Turkish system of private employment offices with European Union standards. ***The Committee would welcome receiving further information on developments and outcomes under this project.***

3. *Revision of Convention No. 96.* The Committee notes that, by section 17 of Chapter 5 of the Turkish Employment Agency Law, private employment agency permits are valid for a period of three years, which are renewable for further three-year periods, whereas *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. In this regard, 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 refers to its 1999 and 2004 observations on this matter, and invites the Government to keep it informed of consultations that may have been held with social partners concerning ratification of Convention No. 181.***

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1977)**

1. *Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee takes note of the information contained in the Government's report received in October 2006, and the supplementary information and comments provided thereon by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employer Associations (TİSK), annexed to the report. The Government indicates that, in 2004, the rate of unemployment declined, for the first time since 1999, to 10.3 per cent and remained unchanged in 2005. The Committee notes that the survey-based unemployment rates produced by the Organisation for Economic Co-operation and Development (OECD) reports Turkey's unemployment rate at 9.9 per cent for 2006. The Committee notes that TÜRK-İŞ expressed its concern that, despite an overall economic growth of 35 per cent from 2002 to 2006, there has not been a significant change in the number of people in employment. ***It hopes that the information contained in the next report on active employment policy measures implemented by the Government under the Convention will enable the Committee to examine the extent to which economic growth translates into better labour market outcomes and poverty reduction.***

2. The Government has reported that to tackle unemployment, active employment policies have been implemented through various institutions and organizations. To this end, the Ministry of National Education has been charged with administering programmes for professional training, while the Turkish Employment Agency (İŞ-KUR) is tasked with analysing matters related to the labour market, and undertaking consultations with social partners, with a view to developing, implementing, and keeping under review, programmes for professional training. The Administration for the Development and Support for Small and Medium-sized Enterprises (KOSGEB) has been, similarly, developing programmes to assist its particular sector. The Government reports that all such programmes have also been developed with due regard to the female working population. ***The Committee would welcome information on the principal policies pursued by the Government, with particular regard to labour market policies developed in order to match labour supply and demand, on both an occupational and geographical basis.***

3. *Particular categories of workers.* The Committee notes that the unemployment rate of women was 10.3 per cent in 2005, and that for young men 20.1 per cent in 2004, and 19.3 per cent in 2005. TÜRK-İŞ expresses its concern that over 1 million young people, graduates from universities, high schools and equivalent vocational schools are unemployed, and young people entering the labour market for the first time are finding it increasingly difficult to find work or to be offered salaries to match their qualifications. TİSK observes that the following measures have been planned to be executed as part of the 2006 Government Programme with a view to eliminating the difficulties encountered by women and youth seeking to enter the labour market: (a) the provision of effective and extensive enterprise training, in which youth and women will be encouraged to become more enterprising, through the provision of professional information, guidance,

advice and training; and (b) the development of work experience programmes entails organizing short-term working arrangements for youth and women in selected workplaces to facilitate their entry into the labour market. **The Committee asks the Government to provide information on the measures taken, and results thereof, aimed at improving access of women and youth to the labour market.**

4. *Article 3. Participation of social partners in the formulation and application of policies.* The Committee takes note of the information provided by the Government, in response to its request for information in its 2004 observation, on the manner in which consultations are held with representatives of employers' and workers' organizations in the Economic and Social Council (EKOSOK). The Committee notes TÜRK-İŞ' indication that the Government and social partners are continuing to work on the adaptation of the structure of the Council in order to establish a structure where representatives from the social parties for the majority, and a platform for effective social dialogue and conciliation. The Committee notes that EKOSOK has held two further meetings between November 2003 and March 2005 in which it discussed restructuring the Council, sought views on the role to be played by civil society in EU accession talks, and undertook a general assessment of social policy and employment, further to the 2004 Development Report, and that further meetings were held with respect to social security reform. The Committee also notes that TISK formulates some suggestions which may contribute to addressing Turkey's employment situation. **The Committee asks the Government to provide information on how such recommendations, and those of other social partners, are considered in the formulation and implementation of active employment policies, including through such mechanisms as EKOSOK, so as to fully take into account their experiences and views.**

5. *Part V of the report form. ILO technical assistance.* The Committee notes the comments provided by TÜRK-İŞ on the value of the technical cooperation project implemented by the ILO in encouraging social dialogue to promote employment and address unregistered unemployment in Turkey. **The Committee requests that the Government describe in its next report the actions that have been taken as a result of the ILO technical cooperation activities carried out in Turkey.**

## Uganda

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

1. The Committee notes with regret that the Government has not supplied any information on the application of the Convention since its last report received in June 2004. **The Committee asks the Government to provide a detailed report containing clear and up to date information in reply to its 2005 observation, which read as follows.**

2. *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. While the Government explained that the draft National Employment Policy represents the first comprehensive action to address the problems of unemployment, underemployment, labour productivity and poverty in the country, it acknowledged that employment remains one of its greatest challenges since more than half of the population lives below the poverty line. Unemployment and underemployment are rampant among women, youth and graduates from institutions of higher learning, tertiary and other institutions. The Government has thus included employment objectives in the development plans and programmes, such as the Poverty Eradication Action Plan aimed at accelerating economic growth and the eradication of poverty. **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.**

3. 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).**

4. *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 takes due note of this information and 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 (see paragraph 493 of the 2004 General Survey on promoting employment). **The Committee would appreciate continuing to receive information on the involvement of the social partners in the matters covered by the Convention.**

## Ukraine

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1968)**

1. *Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee takes note of the information contained in the Government's report received in October 2006 indicating the main objectives of the Government's employment policy which provides, inter alia, for the creation of 1 million jobs per year, primarily in the field of innovative and high-technology production, in rural areas, in the service sector and tourism, as well as in towns which rely on one single economic activity. In 2005, the level of employment of the population aged between 15 to 70 years increased, from 56.7 per cent in the previous year to 57.7 per cent, while the level of unemployment decreased, from 8.6 per cent to 7.2 per cent for the same period. The Committee notes that the Government attributes an improvement in the situation of the labour market to its implementation of measures to promote employment and to positive developments in the economy of Ukraine. ***It is hoped that the information contained in the next report will enable the Committee to examine the extent to which economic growth translates into improved labour market outcomes and poverty reduction. In this regard, the Committee would be grateful to receive information on the results achieved by the measures implemented as part of an active policy intended to promote full, productive and freely chosen employment (Article 1, paragraph 1, of the Convention). Please also indicate the manner in which employment objectives are taken into account in the adoption and review of measures under monetary, budgetary and taxation policies, and price, income and wage policies.***

2. *Employment market measures.* The Government reports that, in 2005, 2.98 million persons, who were not occupied in labour activity, made use of the services of the State Employment Service. The number of persons obtaining employment with the assistance of the State Employment Service amounted to 1,049,800 persons which exceeded, by 6.7 percent, the number of persons who were placed in employment in the previous year. In 2005, 193,300 unemployed persons underwent training, on referral of the State Employment Service, which included 8,700 young workers, representing a 4.8 per cent increase from previous years. ***The Committee asks the Government to provide information on the results achieved by these training programmes and initiatives in promoting the return of unemployed persons to employment.***

3. *Education and vocational training.* The Committee also takes note that the draft Law of Ukraine on Professional Development of Personnel at Work was elaborated and submitted to the Supreme Rada for its consideration. The Committee further notes that the Concept, and its corresponding Implementation Plan, for the development of the system of skills development of the employees for the period until 2010, was approved by the Cabinet of Ministers. The Committee similarly notes that an Interdepartmental Advisory Committee on Vocational Training of Personnel at Work was established under the auspices of the Ministry of Labour and Social Policy. ***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.***

4. *Collection and use of employment data.* The Committee also takes note that, during 2005, new jobs were created for more than 1.1 million persons and that, of these new jobs, more than 64 per cent were created in the sphere of business activity and self-employment. The Government reports that the level of forced partial employment is decreasing and that the number of persons who work on a part-time basis decreased by 15.5 per cent from the previous year and that the number of employees on leave as a consequence of a managerial decision decreased by 9.4 per cent. ***The Committee appreciates the Government's efforts to provide statistics on the situation and trends on employment, and invites the Government to provide information on the manner in which the data have been used in deciding on, and reviewing, employment policy measures.***

5. *Special measures taken in respect of miners who were laid off as a result of the closure of mines.* In reply to previous comments, the Government reports that, during the period beginning from 1997, 63,500 miners applied to the State Employment Service for assistance in finding jobs. Of these, 22,300 persons were covered at the employment centres by proactive forms of employment, including 14,400 persons who were placed in vacant or newly created jobs, 2,000 who were assigned to vocational training and retraining and 5,900 who participated in public works. ***The Committee requests the Government to continue to provide in its next report information on the measures taken, and the results of such measures, in facilitating the return of former miners to productive employment.***

6. *Special measures taken in respect of persons affected by the closure of the Chernobyl nuclear plant.* As requested in previous comments, the Committee notes the information provided by the Government on the activities offered by the State Employment Service in assisting unemployed inhabitants of the town of Slavutich and former employees of the Chernobyl nuclear plant, including through job placement, vocational training and public works. ***The Committee would appreciate the Government continuing to provide information in its next report on the outcome of initiatives aimed at assisting persons affected by the closure of the Chernobyl nuclear plant in accessing the labour market.***

7. *Article 3. Participation of social partners in the formulation and implementation of policies.* The Government indicates in its report that, in 2005, it made efforts to improve the legislation in the sphere of employment of the population, to prevent mass unemployment and to strengthen social protection of the registered unemployed persons. The Committee similarly notes that the Ministry of Labour and Social Policy of Ukraine has developed drafts of the laws and

regulatory and legal instruments, aimed at the development of entrepreneurship, creation of new jobs and eradication of “shadow” economies and meeting the requirements of the economy for a skilled labour force. *The Committee asks the Government to provide further information on the results achieved from the adoption of such legislative instruments. It further requests that the Government indicate how the representatives of the social partners, including those working in the rural sector and the informal economy, are consulted in the formulation and implementation of the employment policy.*

## Uruguay

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1977)**

1. The Committee notes the Government’s report received in August 2006 and the observations made by the Inter-Union Assembly of Workers – National Convention of Workers (PIT–CNT), which were received in October 2006.

2. *Articles 1 and 2 of the Convention. Application of employment policy in the framework of a coordinated social and economic policy.* According to the data provided by the Government, the recovery of the Uruguayan economy made it possible to return, at the end of 2005, to the level of production that existed prior to the economic recession at the end of 1998. According to the information published by the Economic Commission for Latin America (ECLAC) in the *Preliminary overview of the economies of Latin America and the Caribbean 2006*, with GDP growth of 7.3 per cent in 2006, the country continued its growth path as a result of the increases in both exports and internal demand, a stable fiscal situation, a moderate external deficit and inflation of around 6 per cent. As a result of the increase in employment and real wages in 2005, urban poverty decreased by almost 1 per cent in very poor households, and 3 per cent in poor households. The labour market showed signs of recovery: job supply rose by 1.6 per cent, with a fall in the unemployment rate to 12.2 per cent. The Committee notes the policies implemented by the Government with a view to increasing the level of employment directly and promoting employment through macroeconomic stability and the encouragement of investment. The Government has also endeavoured to extend and diversify markets for exports with a view to promoting job creation. The National Employment Promotion Strategy is designed to increase employment levels, provide mediation between supply and demand, prevent unemployment and provide appropriate protection in the event of unemployment. *The Committee requests the Government to provide specific information in its next report on the results achieved through the measures adopted for the creation of productive employment and the reduction of unemployment and underemployment. It also requests information on the results of the measures adopted by the National Directorate of Employment (DINAE) for the progressive integration of the informal economy into the formal labour market. The Committee recalls its interest in being provided with information on the manner in which the objectives of full employment are taken into account when formulating national economic policy and on the difficulties encountered in reducing poverty levels.*

3. The Government indicates that Commission 2 of MERCOSUR Labour Subgroup 10 has addressed subjects related to employment, vocational training, labour migration and the Labour Market Observatory. It also supported a high-level group for employment. The PIT–CNT observes that the approach to labour matters adopted over the past four years has been characterized by inertia and has not been productive. *The Committee once again expresses interest in being provided with information on the measures that have been adopted in the context of MERCOSUR to promote active policies for full employment and the progress achieved in adapting labour market measures to changes in international trade.*

4. *Education policies and the supply of vocational training.* The Committee notes with interest the increase in the budget allocated for public expenditure on education. It recalls the importance of education and training policies as an integral part of economic strategies and for the promotion of employment opportunities in a context of a global economy that is in constant transformation. *The Committee requests the Government to continue providing information on the measures that are being adopted by the Government to improve the employability of the labour force through training measures.*

5. *Article 3. Participation of the social partners in employment policies.* The PNT–CNT has transmitted a proposal for the establishment of a national employment institute to coordinate the various state bodies related to employment and vocational training. According to the PIT–CNT, there is a dispersion between the bodies responsible for unemployment insurance, vocational training, employment programmes, placement and skills certification. The PIT–CNT further indicates that the local employment committees lack support and are not taken into account in the National Employment Promotion Strategy. The PIT–CNT adds that the convening of Wage Boards has not been put to good use in terms of employment and vocational training policies. *The Committee would like to examine in the next report the manner in which the opinions expressed by the social partners in relation to the application of the Convention have been taken fully into account. In particular, the Committee requests the Government to ensure that the information contained in its next report covers the action taken in relation to the proposals made by the PIT–CNT to overcome the weaknesses that have to be resolved with a view to achieving, with the participation of the social partners, the objectives of full and productive employment set out in the Convention.*

### **Private Employment Agencies Convention, 1997 (No. 181) (ratification: 2004)**

*Legal regime governing private employment agencies.* The Committee notes that in the reply of the Government to the direct request of 2006, the Government has recalled that a special commission was in operation until August 2004 and had prepared draft regulations for Convention No. 181. It has also said that the draft regulations were submitted for technical analysis before being presented for consideration by the Tripartite International Standards Group. While the Government recalls that the mere ratification of Convention No. 181 implies its integration into the national legal system as a law, nevertheless it recognizes that enforceable regulations are necessary to ensure the effective supervision and control of private employment agencies. The Government indicates that, although information is gathered for statistical purposes, there is no law which compels private employment agencies to be authorized nor does it make the obtaining of licences mandatory. Agencies which voluntarily apply for authorization must follow the prescribed procedure for the grant of authorization. The Committee notes the Government's assertion that it will provide as soon as possible the updated text of the draft Decree regarding private employment agencies. The Committee also notes that in the observations received from the Inter-Union Assembly of Workers–National Convention of Workers (PIT–CNT), serious deficiencies have been alleged in the monitoring of private employment agencies, particularly with regard to workers experiencing difficulties in being paid their wages and in performing work under satisfactory conditions. In the view of the PIT–CNT, the action taken in relation to the supervision of third party recruitment is also inadequate. ***The Committee once again requests the Government to send the text of the Decree giving effect to the Convention, together with information enabling the examination of the application of each of the provisions of the Convention, and data on the number and nature of any infringements reported in connection with the activities of private employment agencies.***

### **Direct requests**

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 88** (Belize, Ethiopia, Mauritius, Netherlands, Netherlands: Aruba, Slovakia, Thailand, Bolivarian Republic of Venezuela); **Convention No. 96** (France); **Convention No. 122** (Armenia, Australia, Brazil, Canada, Croatia, Cuba, Cyprus, Estonia, France: French Polynesia, New Caledonia, St. Pierre and Miquelon, Georgia, Iceland, Ireland, Jamaica, Republic of Korea, Lebanon, Libyan Arab Jamahiriya, Lithuania, Mauritania, Republic of Moldova, Mongolia, Morocco, Netherlands: Netherlands Antilles, Norway, Panama, Papua New Guinea, Romania, Slovenia, Suriname, Sweden, Tunisia, United Kingdom, Uzbekistan, Bolivarian Republic of Venezuela); **Convention No. 159** (Bosnia and Herzegovina, Burkina Faso, Côte d'Ivoire, Fiji, Guinea, Mauritius, Poland, Sao Tome and Principe, Uruguay, Zambia); **Convention No. 181** (Albania, Georgia, Lithuania, Netherlands).

## ***Vocational Guidance and Training***

### **Direct requests**

A request regarding certain points is being addressed directly to **Convention No. 142** (*San Marino*).

## Employment Security

### Australia

#### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1993)**

1. The Committee notes the Government's detailed report received in November 2006, and particularly the relevant provisions of the Workplace Relations Amendment (Work Choices) Act, 2005, which amends the Workplace Relations Act, 1996. The 1996 Act provided remedies for unfair dismissals and unlawful dismissals. Those remedies give effect respectively to *Articles 4 and 5 of the Convention*.

2. The Work Choices Act exempts employers who employ 100 employees or less from the provisions of the unfair dismissal provisions in the 1996 Act. The Act also removes the unfair dismissal remedy for genuine operational reasons such as those based on economic, technological, structural or similar matters relating to the employer's business. The Government identified in its report two main justifications for the Act: (a) to remove constraints on demand for labour and to allow businesses to respond to changes in market conditions; and (b) the cost of defending an unfair dismissal claim, even one without merit, can be substantial and impacts more significantly on the hiring decisions of smaller and medium businesses.

3. *Article 2, paragraphs 4–6, of the Convention. Categories of workers excluded from the scope of the Convention.* The Government indicates in its report that the exclusion of employers with 100 employees or less is consistent with *Article 2, paragraph 5*, of the Convention, because "special problems of a substantial nature" arise depending on the size of the employer's undertaking. The Committee recalls that the exclusion permitted by *Article 2, paragraph 5*, only applies if the Government lists the exclusion in the Government's first report. It notes that the Government did not list the exclusion of employers with 100 employees or less in its first report received in September 1995.

4. *Valid reasons. Remedies.* The Committee notes that the Convention applies to all employees (*Article 2, paragraph 1*). It further notes that *Article 4* states that the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. *Article 8* states that workers who considered that their employment is unjustifiably terminated shall be entitled to appeal that termination to an impartial body. ***The Committee observes that the exclusion of employers with 100 employees or less from the remedies for unfair dismissal in the Workplace Relations Act, 1996 is therefore inconsistent with the Convention as well as the removal of the remedy to appeal against a termination which purports to be based on operational reasons. It thus requests the Government to amend the Workplace Relations Act so as to give full effect to the provisions of this Convention and to advise on developments in this regard.***

5. The Committee further notes a communication of 3 December 2007 sent by the Government recording its commitment to making substantial amendments to Australia's workplace relations legislative framework. ***It requests the Government to report on any amendments that touch upon the application of Convention No. 158.***

[The Government is asked to reply in detail to the present comments in 2009.]

### Cameroon

#### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)**

1. The Committee notes the Government's reply to the September 2006 comments of the General Union of Cameroon Workers (UGTC), received in November 2006, and the new comments of the UGTC of August 2007, sent to the Government in September 2007. The Government states that, when the liquidation or privatization of a state enterprise is announced, the Minister for Labour and Social Security is always careful to set up tripartite ad hoc committees responsible for dealing with the social component of this structural reorganization, under the umbrella of social dialogue. For its part, the UGTC states that the restructuring, liquidation and privatization of state enterprises continues to be responsible for increasing the number of cases in which workers are dismissed without being paid their entitlements and that, in the same sense, private enterprises carry out unfair dismissals, sometimes without providing any explanation at all. The UGTC states that the failure to respect legal and regulatory provisions, in particular as far as staff delegates and trade union representatives are concerned, and lengthy administrative and judicial proceedings against dismissals constitute a violation of the provisions of the Convention. The Committee points out, once again, that compliance with the principles set forth in the Convention may facilitate the development of socially responsible economic activity when taking decisions relating to collective dismissals. Terminations of employment for economic, technological, structural or similar reasons must be consistent with the provisions of *Articles 13 and 14 of the Convention*, particularly in respect of the consultation of workers' representatives and notification to the competent authority. ***The Committee requests the Government to indicate in its next report the manner in which compliance with the provisions of the Convention has been secured during the restructuring of enterprises referred to by the UGTC. Moreover, the Committee notes with regret that the Government has not provided the report requested in the Committee's previous observation. The Committee trusts that***

*the Government will shortly provide a report in reply to the August 2007 comments of the UGTC and the main points already raised in the Committee's 2006 observation, which are outlined below.*

2. *Article 4. Determination of valid reasons for termination of employment.* In its previous report, the Government stated that effect is given to *Article 4* by section 34(1) of the Labour Code, which is reproduced in collective agreements and provides that "a contract of employment for an indefinite period may always be terminated at the will of one of the parties. Such termination is subject to notice given by the party taking the initiative to end the contract and shall be notified in writing to the other party with an indication of the reason for termination". The Government indicated that the reasons considered to be valid grounds for termination are generally determined by the internal rules of each enterprise. The Committee recalls that Paragraph 1 of Recommendation No. 166 contemplates "workers' rules" as a method of implementation but, as the Committee observed in paragraph 30 of the 1995 General Survey on protection against unfair dismissal, it may prove difficult to rely on internal work rules to give effect to the provisions of the Convention when they only cover the enterprise to which they apply. ***The Committee therefore requests the Government to ensure, in a manner consistent with its national practice, that full effect is given to the obligation established by Article 4 of the Convention that the employment of any worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the enterprise, establishment or service. Please also provide copies of recent court decisions by which the tribunals have given effect to this important provision of the Convention.***

3. *Article 5(c) and (d). Invalid reasons for termination.* In its previous report, the Government indicated that the application of *Article 5* is ensured by sections 39(1) and 84(2) of the Labour Code, which the Committee had already noted in its previous comments. ***The Committee once again requests the Government to indicate the manner in which it is ensured in law and practice that the filing of a complaint or the participation in proceedings against an employer involving alleged violations of laws or regulations, or recourse to competent administrative authorities (Article 5(c)), as well as the 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 of employment. Please provide copies of relevant court decisions.***

4. *Article 7. Defence procedure prior to termination of employment.* The Government indicated that collective agreements and internal rules give effect to this provision of the Convention. ***The Committee once again requests the Government to indicate the manner in which the right to defence prior to termination of employment is ensured for all workers, in particular by providing copies of the relevant provisions of any collective agreement or internal rules that are available, and any recent judicial decision, most notably concerning the dismissal of staff delegates or trade union representatives.***

5. *Article 8, paragraph 3. Time limits for the appeal procedure.* The Government indicated that the time limits available to workers to exercise their right of appeal against termination of employment can be inferred from section 74 of the Labour Code, which provides in subsection 1 that "legal action respecting the payment of wages is subject to a three-year prescription". The Committee notes that section 74 deals with legal action concerning payment of wages. ***It therefore requests the Government to indicate how section 74 of the Labour Code ensures the right to appeal against unfair dismissal within a reasonable period of time after termination, as required by Article 8, paragraph 3, of the Convention.***

6. *Articles 11 and 12, paragraph 3. Definition of serious misconduct.* The Committee noted the Government's indication that the concept of "serious misconduct" is left to the appreciation of national jurisdictions. In paragraph 250 of its 1995 General Survey, the Committee already noted that, since this definition is fairly general, it is only by looking at the application in practice, and in particular case law, that an assessment can be made of the extent to which the provisions of the Convention are observed. ***The Committee once again asks the Government to provide copies of relevant court decisions so as to enable it to examine the application of Articles 11 and 12, paragraph 3, of the Convention.***

7. *Parts IV and V of the report form. Application of the provisions of the Convention in practice.* The Committee once again draws the Government's attention to the importance of regularly providing information on the manner in which the Convention is applied in practice so as to enable the Committee to examine the application of its provisions, and particularly *Articles 4, 5, 7, 8, paragraph 3, 11 and 12, paragraph 3.* ***The Committee trusts that the Government's next report will contain relevant and up to date information on the application of the Convention.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Democratic Republic of the Congo

### ***Termination of Employment Convention, 1982 (No. 158) (ratification: 1987)***

1. 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 2002. ***The Committee trusts that the Government will very soon be in a position to supply a report containing clear and up to date information, particularly in reply to the points raised in the Committee's 2005 direct request, which referred to the matters below.***

2. *Article 5(c) and (d) of the Convention. Invalid reasons for termination.* The Government stated that section 62 of the draft revised Labour Code would ensure that sex, religion, matrimonial status, family responsibilities, pregnancy and the fact of having filed a complaint or taken part in an action brought against an employer or having lodged an appeal with the competent administrative authorities did not constitute valid reasons for dismissal. ***The Committee hopes that in its next report the Government will be in a position to state that the draft revised Labour Code has been adopted.***

3. *Article 12. Severance allowance and other income protection.* The Government indicated that the provisions of this Article of the Convention are given effect to only by a Memorandum of Understanding concluded in October 1999 between company heads of the commerce sector represented by the Congolese Federation of Enterprises (FEC) and various trade union organizations, which provides for payment of a severance allowance, the amount of which depends on the length of service. The Committee noted that the Memorandum of Understanding was concluded under section 49 of the Labour Code which provides that a worker whose employment has been terminated may also be paid a termination allowance if the contract or collective agreement so provides. In this respect, the Committee recalls, once again, that under *Article 1* of the Convention, where the provisions of the Convention are not made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, they shall be given effect to by laws or regulations. ***The Committee also recalls that under Article 12, paragraph 1, a worker whose employment has been terminated is entitled to a severance allowance or any other form of income protection or benefit, and trusts that the Government will take the necessary steps to give effect to this provision of the Convention for workers who are not covered by the Memorandum of Understanding in the commerce sector or any other collective agreement, and that it will provide this information in its next report. The Government is also requested to indicate the manner in which it gives effect to Article 12, paragraph 3, under which, in the event of termination for serious misconduct, provision may be made for loss of entitlements or allowances by the methods of implementation referred to in Article 1 of the Convention.***

4. *Parts IV and V of the report form. Application of the provisions of the Convention in practice. Please provide the information required on the application of the Convention in practice, including court decisions involving questions of principle 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.*

## Finland

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1992)**

1. *Article 2, paragraph 3, of the Convention. Adequate safeguards against recourse to fixed-term employment contracts.* In reply to its 1999 observation, the Committee notes the information contained in the Government's report for the period ending May 2006 and the State Civil Servants' Act (No. 750 of 2004) attached to its report. The Committee particularly notes that the Employment Contracts Act (No. 55 of 2001) entered into force on 1 June 2001. With reference to previous comments, the Government states that this Act repealed the provision temporarily extending the possibilities of concluding employment contracts for a fixed-term when demand was unstable for the services in an enterprise (No. 56 of 1997).

2. The Central Organisation of Finnish Trade Unions (SAK) and the Confederation of Unions for Academic Professionals in Finland (AKAVA) argue that the protections afforded by the Convention and the Employment Contracts Act are being eroded by the following practice. Employers are hiring employees to work for customers. The employees are hired on fixed-term contracts aligned to the length of the contract between the employer and the customer. The fixed-term contracts are justified on this basis even though the customer's need for employees is ongoing. According to the SAK and the AKAVA, in this case the provisions on temporary work relations are eluded.

3. With reference to previous comments, the Government explains that according to the Public Employment Services Act (No. 1295 of 2002), the purpose of subsidized employment is to improve the labour market position of a person by promoting placement at work and improving vocational and other skills. Fixed-term contracts are used to support particularly the employment of the long-term unemployed, young persons and disabled workers to prevent the lengthening of periods of unemployment and to level out regional differences in unemployment. In this regard, the Government indicates that at the end of June 2006, 38,300 persons had been employed through the Labour Administration's employment subsidy measures, 1,400 less than the figures of the previous year. Of those that had been placed, 6 per cent were working for the State, 25 per cent for municipalities and 69 per cent in the private sector, and the objective is to further increase the share of the private sector. The Finnish Confederation of Salaried Employees (STTK) alleges that fixed-term contracts are to a great extent used in the public sector (20–30 per cent of the public sector's employment relationships) despite the fact that the Employment Contracts Act requires hiring persons for a permanent employment relationship when the need for labour is permanent. ***The Committee asks the Government to indicate what safeguards have been provided to guarantee fixed-term contracts are not used in practice with the aim of avoiding the protection resulting from the Convention, providing examples of how the notion of "justified reasons" in the Employment Contracts Act is used in public and private sectors. In this respect, the Committee would appreciate receiving information on the subsidized employed persons, the maximum length of use of fixed-term contracts in such instances, and their impact.***

4. *Article 13. Consultation of workers' representatives concerning terminations of employment for economic, technological, structural or similar reasons.* The Committee notes that the Government indicates in its report that the Ministry of Labour Committee, discussing the reform of the Act on Co-operation within Undertakings (725/1978), proposes the adoption of a new Act. ***The Committee asks the Government to keep it informed about any legislative change on the consultation of workers' representatives on terminations of employment for economic, technological, structural or similar reasons.***

5. *Parts IV and V of the report form. Practical information on the application of the Convention. Please continue providing available information on the manner in which the provisions of the Convention are applied in practice, including any relevant judicial decision involving questions relating to the application of the Convention.*

## France

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1989)**

1. *Article 24 of the Constitution of the ILO. Follow-up of a representation.* The Committee notes the Government's report received in June 2007 for the period 1999–2005, which refers in particular to the “contract for new employment” (CNE), adopted under Ordinance No. 2005-893 of 2 August 2005. It also notes the information on the developments in case law and the data provided on collective dismissals, appended to the Government's report. Furthermore, the Committee notes that at its 300th Session (November 2007), the Governing Body adopted on 14 November 2007 the recommendations of the tripartite committee established to examine the representation alleging non-observance by France of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Termination of Employment Convention, 1982 (No. 158), made under article 24 of the Constitution of the ILO by the Confédération générale du travail – Force ouvrière. These recommendations entrusted the Committee of Experts to follow up the application of Convention No. 158 in respect of the questions raised in the representation (document GB.300/20/6).

2. *Article 2, paragraph 2, of the Convention. Exclusions.* The Government stated that workers recruited under a CNE can validly be excluded from the protection afforded by the Convention on the basis of *Article 2, paragraph 2(b)*, under the terms of which workers serving a period of probation or a qualifying period of employment can be validly excluded from the protection of the Convention on condition that “such period is determined in advance and is of reasonable duration”. The tripartite committee concluded that there is not sufficient basis for considering the period of consolidation of employment as a “qualifying period of employment” of “reasonable duration”, within the meaning of *Article 2, paragraph 2(b)*, which would justify the exclusion of the workers concerned from the benefits of the Convention during that period. ***Accordingly, pursuant to the recommendation approved by the Governing Body, the Committee invites the Government to submit a report on the measures taken, in consultation with the social partners, to ensure that the exclusions from the protection provided by the laws and regulations implementing the Convention, are in full conformity with its provisions.***

3. *Article 4. Valid reason for termination.* The tripartite committee also concluded that Ordinance No. 2005-893 significantly departs from the requirements of *Article 4* of the Convention which is “the cornerstone of the Convention's provisions”, as indicated by the Committee of Experts in paragraph 76 of the General Survey of 1995 on protection against unjustified termination. ***Accordingly, pursuant to the recommendation approved by the Governing Body, the Committee invites the Government to include in its report the measures taken, in consultation with the social partners, to give effect to Article 4 of the Convention, by ensuring that “contracts for new employment” can in no case be terminated in the absence of a valid reason.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Gabon

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)**

1. *Parts IV and V of the report form.* The Committee notes the Government's report received in August 2007 which reproduces the information already communicated in September 2005. The Committee regrets that the Government's report does not contain any specific information in reply to its 2006 observation, which referred to the comments the Committee had been making for a number of years on the application of the Convention. The Committee recalls once again the importance of regularly providing new and relevant information on the application of the Convention so that it can assess the application of each of the provisions. ***The Committee trusts that the Government's next report will finally contain information on the application of the Convention in practice, including examples of recent court decisions, particularly regarding the definition of “real and serious” grounds for termination.***

2. *Articles 8, paragraph 2, and 9, paragraph 3, of the Convention. Termination on economic grounds authorized by the labour inspector.* The Committee notes that section 296 of the Labour Code, which refers to the dismissal of a staff delegate or his deputy, provides that the decision by the labour inspector may be challenged in the administrative courts.

*The Committee refers to its previous comments and once again asks the Government to indicate whether workers dismissed on economic grounds also have the right to challenge the labour inspector's decision to authorize their individual or collective dismissal.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Latvia

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1994)**

1. The Committee notes the detailed information provided by the Government in reply to its 2006 direct request and its report received for the period ending June 2007. It notes the legislative amendments introduced in September 2006 to the Labour Law. It notes with interest the data provided on cases reviewed by its courts in 2006–07 and the summary of jurisprudence of the Supreme Court of 2004 concerning reinstatement (*Article 10 of the Convention*). It particularly notes with interest the Supreme Court decision in case No. SKC-229 of 19 May 2004, which refers directly to *Article 8, paragraph 3*, of the Convention. In addition, the Committee notes that a maximum period of temporary incapacity of an employee has not been specified by the national legislation (*Article 6, paragraph 2*, of the Convention). ***The Committee welcomes the information provided and would appreciate continuing to receive updated information on the manner in which effect is given in practice to each provision of the Convention (Parts IV and V of the report form). Please also provide information on the following points.***

2. *Article 2, paragraphs 2 and 3. Adequate safeguards in case of recourse to contracts of employment for a specified period.* The Committee notes that Part One of section 45 of the Labour Law has been amended providing that the term for an employment contract entered into for a specified period may not exceed three years (previously the maximum period was two years). ***It requests the Government to provide information on the manner in which the protection provided by the Convention is ensured to workers who have concluded an employment contract for a specified period, indicating the number of workers affected by these measures.***

3. *Article 5(c). Invalid reason for termination.* In reply to previous comments, the Government indicates that, in addition to section 94 of the Labour Law, protection of the employee when informing competent authorities of suspected offences and violations in the workplace is provided by Part One of section 9 of the Labour Law, as amended in September 2006. ***The Committee would appreciate receiving further information on the manner in which Part One of section 9 of the Labour Law is applied in practice.***

## Lesotho

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 2001)**

1. The Committee notes with regret that the Government has not provided any information on the application of the Convention since its first report received in December 2003, which referred in particular to Labour Code Order No. 24 of 1992 and the Labour Code (Codes of Good Practice) Notice, 2003. The Committee recalls the importance of regularly providing precise and up to date information so that it can assess the extent to which effect is given to the provisions of the Convention. ***The Committee trusts that the Government will be in a position to supply a report containing precise and up to date information, particularly in reply to the points raised in the Committee's 2004 direct request, which referred to the matters below.***

2. *Article 2, paragraph 3, of the Convention. Adequate safeguards against recourse to contracts of employment for a specified period of time.* ***Please provide copies of any additional legislation or relevant case law which indicates that adequate safeguards are provided against recourse to contracts of employment for a specified period of time which are aimed at avoiding the protection resulting from the Convention, and specifically to clarify the position in law and in practice with respect to trainees and apprentices.***

3. *Article 2, paragraphs 4 and 6. Categories of employed persons excluded from the scope of the Convention.* The Committee previously noted that the Labour Code excludes from its scope members of the armed forces, the police force and "any other disciplined force within the meaning of Chapter II of the Lesotho Independence Order of 1966" (section 2(2)(a)). It further noted that other public servants have also been excluded by the Labour Court (Exemption) Order No. 22 of 1995. ***Please provide copies of the provisions which govern protection against termination of employment for these categories of workers and indicate whether the organizations of employers and workers concerned were consulted on such exclusions. Please also continue to provide information in subsequent reports on the effect that has been given, or is proposed to be given, to the Convention in respect of public servants, workers on probation and trainees or apprentices.***

4. *Article 4. Valid reason for termination.* ***Please continue to supply information on how the provisions in section 19(2) of the Code of Practice on legitimate reasons for termination based on operational requirements of the undertaking are applied in practice.***

5. *Article 9, paragraph 3. Burden of proof. Please provide information on the effect given in practice to the requirement for a judicial examination of terminations for economic or similar reasons, as well as on whether the reasons invoked by employers are sufficient reasons to justify termination for economic or similar reasons.*

6. *Article 14. Notification to the competent authority.* The Government stated in its report that effect is given to this provision of the Convention only through the “practice of some companies”. ***The Government is requested to submit information on how it is ensured that effect is given to this provision in practice.***

7. *Part V of the report form. Application of the provisions of the Convention in practice. Please provide general information on the manner in which the Convention is applied in practice, including on the consultations with workers’ representatives in case of terminations for reasons of an economic, technological, structural or similar nature (Article 13, paragraph 1), and available statistics on the activities of the Directorate of Dispute Prevention and Resolution and of the Labour Court of Appeal (Article 8) (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).*

[The Government is asked to reply in detail to the present comments in 2008.]

## Namibia

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1996)**

The Committee notes the Government’s brief report received in November 2006 that refers to the promulgation of the Labour Act (No. 15 of 2004). It understands that Act No. 15 of 2004 has not been enforced in practice and a new Labour Act has been adopted in 2007 but has not yet been enacted. The Committee draws the Government’s attention to the importance of providing detailed and relevant information on the application of the provisions of the Convention, particularly when adopting a new legislation concerning matters covered by the Convention. ***The Committee therefore requests the Government to provide up to date and detailed information on the manner in which effect is given in national law and practice to each of the provisions of the Convention.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Papua New Guinea

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 2000)**

1. The Committee notes the Government’s report received in January 2007, indicating that, whilst no major amendments have been encountered since its last report in 2002, progress has already been made in the review of the industrial relations machinery in the country, which will culminate in the establishment of a new industrial relations Act, a new industrial relations commission and a new industrial relations administrative structure that will look after the industrial relations processes. It notes that the new industrial relations Act is to be approved in 2007. ***The Committee hopes that 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. It requests the Government to supply detailed information on the manner in which the Convention is applied in law and in practice. Please provide a copy of the legislation which gives effect to Convention No. 158, as well as the information specifically requested by the report form under each Article of the Convention.***

2. In the light of the information which the Government is asked to provide regarding the current observation, the Committee will examine the conformity of the legislation and practice with the provisions of the Convention.

[The Government is asked to reply in detail to the present comments in 2008.]

## Sweden

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1983)**

1. *Article 2, paragraph 2, of the Convention. Fixed-term employment by agreement between the parties.* The Committee notes the Government’s detailed report received in February 2007. In reply to the direct request made by the Committee in 2000, the Government refers to the legal guarantees laid down for workers employed for a specified period of time agreed between the parties, pursuant to section 5(a) of the Employment Protection Act. The Committee notes the relevant court decisions issued under section 5(a). The Government indicates that a survey on this category of employment was conducted at a central level with the social partners in winter 2006. In this regard, the Swedish Confederation of Professional Associations (SACO), the Confederation of Swedish Enterprises, the Swedish Agency for Government Employers and also the Swedish Association of Local Authorities and Regions indicated that the establishment of fixed-term contracts had not given rise to any conflict. The Swedish Confederation of Professional Employers (TCO) emphasized that the most common problem, when the 12-month limit was approaching, lay in recruiting a new employee rather than keeping the previous one. The Government indicates that no trade union has statistics on the number of workers affected by this measure except the Swedish Agency for Government Employers, which estimates that 500 to 600 persons are employed in this form in at least half of public sector bodies. The Government states in its report that a

number of amendments concerning fixed-term work are being drawn up, and that it has no intention of re-introducing fixed-term employment agreed between the parties. In this respect, the Committee notes the repeal of section 5(a) by Act No. 440 of 24 May 2006 amending the Employment Protection Act, which came into force on 1 July 2007.

2. The Committee notes the practical information contained in the Government's report concerning the legislative amendments that have occurred since 2000. It notes in particular that amendment SFS 2000: 626 excludes workers who are employed for work with special employment support from the scope of the 1982 Employment Act. The Government states in its report that draft statutes are currently being drawn up which should abolish this exception and bring this group of workers within the scope of the Employment Protection Act. **The Committee asks the Government to keep it informed of all legislative developments relating to the subjects covered by the present Convention.**

3. *Part V of the report form. Practical information on the application of the Convention.* The Committee notes the information supplied on the number of workers recruited on fixed-term contracts and notes that, in 2005, 17.6 per cent of female employees and 13.9 per cent of male employees had a fixed-term contract. **The Committee asks the Government to continue to supply up to date information on the manner in which each of the provisions of the Convention is applied in practice, particularly by providing statistics on the activities of the bodies of appeal.**

## Turkey

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1995)**

1. 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 (TISK). **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).**

2. *Follow-up of a representation (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.**

3. *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.**

4. *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, paragraph 5*, of the Convention, and indicates that establishments with fewer than 30 workers are excluded from the application of the Convention. TISK 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. TISK 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, paragraph 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, paragraphs 5 and 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, paragraph 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.**

5. *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.***

6. *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. TISK 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", TISK 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.***

7. *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 Government is asked to reply in detail to the present comments in 2009.]

## 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 last report received in June 2004, which indicated, once again, that the draft Employment Bill which, according to the Government, should give effect to the Convention, has still not been adopted. Recalling that under the terms of *Article 1 of the Convention*, the provisions of the Convention are required to be given effect by laws or regulations (in so far as they are not made effective by collective agreements, arbitration awards or court decisions, or in such other manner as may be consistent with national practice), the Committee observes that the reform of the labour law has benefited from continued ILO assistance, particularly in the context of project UGA/99/003 financed by UNDP. In this context, the Committee considers it particularly regrettable that, more than 17 years after the entry into force of the Convention, the Government has still not provided the relevant information on its application. ***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 asked to reply in detail to the present comments in 2008.]

## Bolivarian Republic of Venezuela

### ***Termination of Employment Convention, 1982 (No. 158) (ratification: 1985)***

1. The Committee notes the Government's report received in September 2006, in which reference is made to the Regulations to the Organic Labour Act adopted by means of Decree No. 4447 of 25 April 2006. The Committee notes the information submitted in October 2007 to the Freedom of Association Committee in the context of Case No. 2254 by the International Organisation of Employers (IOE). The IOE states that according to the Organic Labour Stability Bill, prior authorization will be required from the competent administrative authority in order for an employment relationship to be terminated by the employer. ***The Committee invites the Government to comment on this matter and to provide with its next report any legislative texts that have been adopted together with relevant and up to date information on the application of the Convention in practice (Parts IV and V of the report form).***

2. *Article 2, paragraph 3, of the Convention. Recourse to fixed-term employment contracts.* The Government indicates that "youth training contracts" and "temporary work enterprises" have been excluded. ***The Committee refers the Government to its previous comments and would be grateful if in its next report, it would continue to provide information on the adequate safeguards provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.***

3. *Exclusions. Managers. Domestic workers.* The Committee reiterates its request for information on any reforms introduced pertaining to categories that may have been excluded from the Organic Labour Act such as those referred to in

section 112. *In particular, the Committee requests the Government to indicate whether any special arrangements which, as a whole, provide protection at least equivalent to that afforded under the Convention for managers who have served their employers for more than three months and for domestic workers, and to provide details of the position of law and practice regarding the abovementioned excluded categories (see clauses (c), (d) and (e) of the report form for the Convention under Article 2, paragraphs 4–6).*

4. *Article 7. Procedure prior to termination.* According to Article 7 of the Convention, the employment of a worker shall not be terminated for reasons related to the worker's conduct or performance *before* he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity. In its previous comments, the Committee observed that the law and practice examined showed that the measures referred to by the Government are taken *after* termination. *The Committee invites the Government to indicate in its next report the manner in which law and practice have been brought into conformity with Article 7 of the Convention.*

5. *Consultation of workers' representatives.* In reply to the comments that the Committee has been making for many years, the Government indicates that the new Regulations to the Organic Labour Act consolidates action by the Ministry of Labour to protect men and women workers against mass dismissals. The Committee notes that, among other measures, sections 40–45 (suspension of mass dismissals) and 46–49 (termination or modification of the employment relationship for economic or technological reasons) of the Regulations confer authority on the Ministry of Labour to issue immediate preventive measures for the benefit of men and women workers. The Committee again refers the Government to Article 13 of the Convention, which lays down a right for the workers' representatives concerned to be informed or consulted in the event of termination for economic, technological, structural or similar reasons. *The Committee again requests the Government also to ensure that the workers' representatives concerned shall receive relevant information and be given an opportunity for consultation in accordance with Article 13, paragraph 1(a) and (b), of the Convention.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 158** (*Bosnia and Herzegovina, Cyprus, Ethiopia, Luxembourg, Malawi, Republic of Moldova, Niger, Ukraine, Zambia*).

## Wages

### Argentina

#### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1950)

The Committee recalls that in its previous comment it noted with interest the information that the National Council for Employment, Productivity and the Minimum Adjustable Wage, a tripartite consultative body, which had not been consulted when minimum wage levels were modified in 2003 for reasons relating to the situation of emergency in the country, was once again operating normally. It further notes the observations received on 12 September 2007 from the Congress of Argentine Workers (CTA) on the application of the Convention which were transmitted to the Government on 21 September 2007.

The Committee notes that according to the CTA, although the minimum wage (SMVM) has increased by 300 per cent since 2003 (i.e. 3.2 times more than the average income of workers), this government policy has benefited only workers in the formal economy, who account for no more than 57.2 per cent of employees. The Committee also notes the CTA's statement that the pace of collective negotiations has increased significantly, reaching an all time record in 2006. However, according to the CTA, initially, the negotiations did no more than confirm the amount of the minimum wage fixed by the Government and thereafter merely applied the wage indexation rule imposed by the authorities. The Committee also notes the CTA's observations on the working of the National Council for Employment, Productivity and the Minimum Adjustable Wage. It notes that, according to the CTA, the Council, which meets only upon a government decision and not at the initiative of the social partners, has dwindled in importance as a forum for social dialogue to define the priorities and measures to be taken regarding wage policy. The Committee also notes the CTA's statement that because of the way it now operates, the Council is unable to determine the basic basket to serve as a reference for setting the amount of the minimum wage. Lastly, the Committee notes the CTA's conclusion that because of shortcomings in the Council's procedures, there are no objective rules to determine the amount of the minimum wage, the wage policy agreed between the social partners is not implemented, and the amount of the minimum wage is fixed at the discretion of the Government. *The Committee requests the Government to send comments in reply to the CTA's observations.*

*The Government is also asked to reply to the questions the Committee raised in its previous comment and which concerned the following points: statistical data on the number of workers remunerated at the minimum wage rate; copies of collective agreements fixing the minimum wage level by sector or branch of the economy; information on the fixing of the minimum wage for workers excluded from the scope of Act No. 20.744 on work contracts, such as domestic workers and farmers; copies of studies or other official documents – such as the activity reports of the National Council on Employment, Productivity and the Minimum Adjustable Wage – on the functioning of the minimum wage system; extracts of inspection services reports indicating the contraventions reported and the penalties imposed; and statistics on recent trends in minimum wage rates in relation to fluctuations in economic indicators, such as the inflation rate, during the same period.*

[The Government is asked to reply in detail to the present comments in 2008.]

#### **Protection of Wages Convention, 1949 (No. 95)** (ratification: 1956)

The Committee notes the observations made by the Congress of Argentine Workers (CTA) on the application of the Convention, which were received on 12 September 2007 and transmitted to the Government on 21 September 2007. In particular, it notes the CTA's comments relating to section 103bis of the Act on labour contracts, under the terms of which certain benefits in kind, classified as "social benefits", are not considered as forming part of the wage. It also notes the CTA's reference to the adoption of decrees and the conclusion of collective agreements providing for wage increases which are not considered as remuneration. The Committee further notes the CTA's reference to a recent ruling by the labour chamber of the National Court of Appeal, which is reported to have found to be unconstitutional, as they are contrary to ILO Convention No. 95, the first paragraph and subsection (e) of section 103bis referred to above. The Committee further understands that the case law on this issue is not uniform. *The Committee requests the Government to provide its comments in reply to the observations made by the CTA and to supply copies of any relevant court rulings handed down on this subject.*

In this connection, the Committee refers to paragraph 64 of the General Survey of 2003 on the protection of wages, in which it emphasized that:

... Article 1 of the Convention is not intended to establish a binding "model" definition of the term "wages", but to ensure that the real earnings of workers, however termed or reckoned, are fully protected under national laws in respect of the matters dealt with in Articles 3 to 15 of the Convention. As recent experience has shown, especially with regard to the "desalarization" policies practised in certain countries, the obligations deriving from the Convention with respect to the protection of workers' wages cannot be bypassed by mere terminological subterfuges, but require the extended and bona fide coverage by national legislation of labour remuneration whatever form it takes.

The Committee also notes that a Bill to partially repeal section 103bis of the Act on labour contracts is currently being discussed by the Parliament. ***It requests the Government to provide full relevant information concerning the adoption of this text.***

The Committee also notes the observations made by the Federation of Professional Employees of the Government of the Autonomous City of Buenos Aires in relation to the application of the Convention, which were received on 11 June 2007 and forwarded to the Government on 20 August 2007. It notes that this organization reports a collective labour dispute involving 4,600 workers in the health sector and the Ministry of Health of the Government of the City of Buenos Aires, which is reported to be refusing the claims made for a wage increase. The Committee further notes that the above organization is also claiming the conversion into wages of a number of bonuses which are not recognized as remuneration. The Committee notes that the issues raised in these observations are related to those referred to in the CTA's observations concerning social benefits. ***The Committee requests the Government to provide its comments in reply to the observations made by the Federation of Professional Employees of the Government of the Autonomous City of Buenos Aires.***

Furthermore, the Committee notes that a Bill to amend sections 120 and 147 of the Act on labour contracts in relation to the proportion of the wage which cannot be attached is under examination by the Parliament. ***It requests the Government to keep it informed of the progress made regarding the adoption of this text.***

***The Committee also requests the Government to reply to the following questions which were raised in its previous comment.***

First, concerning the payment of wages in the form of locally issued vouchers, the Committee notes the indications in the Government's last report that the issuing of vouchers, serving as wages in certain provinces in the country, has been interrupted. Moreover, a programme of currency unification has been established by Decrees Nos 743/2003 of 28 March 2003 and 266/2003 of 9 April 2003 so as to guarantee the circulation of a single national currency that is legal tender and to redeem the vouchers issued between 2001 and 2002 at the provincial level. ***The Committee requests the Government to keep it informed of any developments in this field and to indicate the proportion of vouchers that are still in circulation and the period envisaged for their redemption.***

Secondly, as regards the deferred payment of wages, the Committee notes the information contained in the Government's report in 2006 on the adjustment of the minimum wage and the rise in average wages over the past three years, which hint at a gradual return to normal in the payment of wages. ***The Committee requests the Government to specify whether all wage arrears have now been settled or whether certain sectors, branches or provinces continue to experience difficulties in paying wages regularly and, if so, to provide specific information on the number of workers concerned and the average delay in the payment of wage arrears.***

Finally, the Committee notes the Government's indications concerning the organization of the labour inspection services and the number of inspections carried out in 2005. ***The Committee requests the Government to continue providing general information on the application of the Convention including, for instance, extracts of official reports of the labour inspection services showing the number and nature of the infringements reported, copies of official studies relating to wage protection, information on the difficulties encountered in implementing the Convention, or any other information enabling the Committee to assess how the Convention is applied in practice.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Bolivia

### ***Protection of Wages Convention, 1949 (No. 95) (ratification: 1977)***

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

The Committee recalls that it has been making comments since 1983 on the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), and the present Convention regarding alleged abuses in the payment of wages to agricultural workers. It notes with regret that the Government confined itself in its last report to indicating that there had been no follow-up on the matter raised in the Committee's previous observations and that investigations had not been carried out on the subject. The Government added that, in the context of its policy, it was seeking, among other aims, to resolve the problems encountered by all salaried workers not covered by the General Labour Act.

In this respect, the Committee notes the study entitled *Enganche y Servidumbre por Deudas en Bolivia* ("The trap of debt bondage in Bolivia"), prepared in 2004 and published by the Office in January 2005, which reports practices resulting in tens of thousands of indigenous agricultural workers being in a situation of debt bondage, with some of them being subject to conditions of permanent or semi-permanent forced labour. According to this study, the methods used include systems of advances on wages, stores located in camps which charge excessive rates in relation to market prices, compulsory deductions from wages for savings schemes, payments in kind and the deferred payment of wages. These practices are found, in one form or another, in the regions of Santa Cruz and Tarija (sugar cane harvest), in the north of Amazonia (chestnut picking) and in the region of Chaco (work in ranches), with this latter region experiencing the worst cases of forced labour in the Andean region. The Committee also notes that the conclusions and recommendations of this study were validated at a tripartite seminar held in La Paz in August 2004. The recommendations of the study included the ratification of the Forced Labour Convention, 1930 (No. 29), and the formulation of a national plan of action to eradicate and combat forced labour in all its forms. ***The Committee draws the Government's attention to the fact that the practices referred to in the study raise problems relating to the application of Article 4 (payment in kind), Article 6 (freedom of the worker to dispose of his or her wages), Article 7 (works stores), Article 8 (deductions from wages)***

and Article 12 (regular payment of wages) of Convention No. 95. It therefore requests the Government to provide detailed information on the measures adopted for the formulation and implementation of a national plan of action to bring these practices to an end.

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

The Committee is addressing other points, including the scope of application of the General Labour Act and its extension to agricultural workers, in a request addressed directly to the Government.

### **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.* 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 that by Act No. 1715 of 18 October 1996 on agrarian reform, agricultural wage workers have come within the scope of application of the General Labour Act and that a Supreme Decree, which is currently in the process of adoption, is 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 chestnut 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.* 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, this amount is renegotiated every year and increases proportionately to the evolution of the consumer price index. The Government adds that the national minimum wage is used for the calculation of various pay supplements and social security benefits, for instance seniority bonus and maternity allowance, and therefore has 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.* 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 reply, the Government indicates that no consultations with the Bolivian Labour Federation (COB) were possible this year due to persistent claims of that organization linked to the participation of the President of the Republic in these consultations. However, negotiations were 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 states that it cannot enter into any such discussions with the Confederation of Private Employers of Bolivia (CEPB) since article 8 of the Statutes of this organization prevents 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, and 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 keep it informed of any developments concerning the establishment of the National Council on Labour Relations.*

*Article 5 and Part V of the report form.* The Committee notes that the Government intends 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 would be grateful to the Government for supplying all available information on the application 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.*

## **Brazil**

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1965)**

The Committee notes the Government's explanations in reply to its previous observations. The Government refers to Technical Note No. 0138/2002 and reiterates the view that there is no need to insert labour clauses into public contracts because the workers' rights are 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 for the last 12 years 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 seizes this opportunity to refer to this year's General Survey 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 Government is asked to reply in detail to the present comments in 2008.]

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1983)**

The Committee refers to the observations made by the Association of Labour Inspectors of the Gaúcha region (AGITRA) and the Association of Labour Inspectors of the Paraná region (AAFT/PR) concerning the alleged lack of meaningful consultations with the social partners in reviewing and adjusting the national minimum wage. These observations were communicated to the Government more than two years ago but no reply has so far been received. The Committee notes that recently there have been some positive developments, such as the establishment in April 2005 of the Quadripartite Commission on the review of the minimum wage bringing together representatives of the federal Government, state governments and the social partners. Moreover, the Committee understands that a new policy for the indexation of the national minimum wage to the inflation rate has been announced and that this policy would be included in a bill to be voted on by the National Congress. The Committee recalls that the minimum wage plays a significant role of social protection and notes in this respect that according to the Brazilian Institute of Geography and Statistics (IBGE), 30.5 per cent of the workforce, or 26.5 million people, earn the minimum rate or less. *It therefore hopes that the Government will take appropriate action to institutionalize the process of quadripartite consultations for the periodic adjustment of the national minimum wage. The Committee further asks the Government to keep it informed of all future developments in this regard and to transmit its observations in reply to the points raised by AGITRA and AAFT/PR.*

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

## **Bulgaria**

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1955)**

The Committee notes the information contained in the Government's report, in particular the adoption of the new Public Procurement Act (SG No. 28/06.04.2004) and its implementing Rules (SG No. 84/27.09.2004). It also notes the establishment of the Public Procurement Agency, an organization responsible for assisting the implementation of national policy in the area of public procurement, as well as the introduction of a Public Procurement Register with a view to ensuring openness and transparency in public procurement. The Committee further notes the adoption of the Ordinance on small public procurement contracts 249/2004 which imposes strict rules even for low-value contracts.

While noting the latest amendments made in view of the harmonization with European Union directives on public procurement, the Committee regrets that the new public procurement legislation – like the previous legislation adopted in 1999 – fails to provide for the insertion of labour clauses in public contracts as required under *Article 2, paragraph 1, of the Convention*. In fact, the only provision concerning the pay conditions of workers engaged in the execution of public contracts is found in section 56(1) of the Public Procurement Act which requires each tender for public works to contain, among other indications and guarantees, a declaration to the effect that the price tendered complies with the minimum labour cost requirements. As for the term “minimum labour cost”, this is defined in section 147(1) of the same Act as the minimum monthly income, differentiated by sector and occupation, and used as a base for the calculation of social security contributions.

The Committee recalls that the mere fact that the labour legislation is applicable to workers engaged in the context of public contracts does not in any way exempt the Government from providing for the inclusion in public contracts of the labour clauses envisaged in the Convention. Such inclusion ensures the protection of workers in cases in which the legislation only establishes minimum conditions of work (e.g. minimum pay rates) which may be exceeded by general or sectoral collective agreements. Moreover, even if collective agreements were applicable to workers engaged in the context of the execution of public contracts, the implementation of the Convention retains its full value in so far as its provisions are designed precisely to ensure the specific protection needed by such workers. For example, the Convention requires the adoption by the competent authorities of measures, such as the advertisement of specifications, to ensure that tenderers have advance knowledge of the terms of the labour clauses (*Article 2, paragraph 4*). It also requires notices to be posted in conspicuous places at the workplace to inform workers of the conditions of work applicable to them (*Article 4(a)*). Finally, it provides for sanctions in the event of non-compliance with the terms of labour clauses, such as the withholding of contracts or the withholding of payments due to contractors (*Article 5*), which may be more directly effective than those available for violations of the general labour legislation.

***The Committee hopes that the Government will adopt without delay the necessary measures in order to give full effect to the requirements of the Convention.*** It recalls, in this connection, that the Government may draw upon the advisory services of the Office should it so wish for the purpose of addressing the issues highlighted 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 Public Procurement Agency – addressing the social aspects 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 seizes this opportunity to refer to this year’s general survey 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 Government is asked to reply in detail to the present comments in 2008.]

## Cameroon

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*** ***(ratification: 1962)***

The Committee notes that, in reply to the comments made by the General Union of Cameroon Workers (UGTC), the Government merely states the procedure followed by the inspection services when a dispute is brought before them. It also notes that, according to the Government, the inspectors can only act if they are informed of a dispute of this type and that the workers must act as the link to the labour inspectorate in enterprises. The Committee is bound to observe that this extremely brief report of the Government does not reply to the UGTC allegations, according to which, in most cases, the employers do not pay the wages provided for by the collective agreement of the sector concerned, and workers engaged in the execution of public contracts do not have any social security protection. ***The Committee requests the Government to reply in detail to its previous comment on this point and on the other issues raised.***

The Committee also draws the Government’s attention to the General Survey which it conducted this year on labour clauses in public contracts, which gives an overview of law and practice in this field in the member States and provides an evaluation of the impact and current relevance of Convention No. 94.

[The Government is asked to reply in detail to the present comments in 2008.]

## Central African Republic

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1964)

Further to its previous comments, the Committee notes with regret that the Government has still not made any concrete progress in implementing the requirements of the Convention in either law or practice. The Government indicates that a new Labour Code making provision for the insertion of labour clauses in public contracts has been approved and will take effect once it is adopted by the national Parliament and enacted by the Head of State. However, the text of the new draft Labour Code has not been communicated and therefore the Committee is not in a position to evaluate the conformity of the announced new labour legislation with the terms of the Convention. ***The Committee therefore asks the Government to forward a copy of the draft Labour Code as it currently reads in order to enable the Committee to review and comment upon the relevant provisions referring to public contracts.***

Moreover, the Committee understands that the Government has recently undertaken a review of its public procurement system and the drafting of a new public procurement code with the support and under the guidance of international financial institutions such as the World Bank, the International Monetary Fund and the African Development Bank. The Committee hopes that in pursuing the reform and modernization of its public procurement system, the Government will not fail to take into account the points raised by the Committee over the past 30 years and give full effect to the obligations arising out of the ratification of this Convention. ***The Committee requests the Government to keep it informed of the process of revision of the public procurement legislation and to transmit a copy of any relevant legal text as soon as it is adopted.***

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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 Government is asked to reply in detail to the present comments in 2008.]

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

Further to its previous observation, the Committee has been in receipt of the report of the joint technical committee, which was set up in March 2006, to study the possibility of unfreezing the salaries of civil servants and to evaluate the amount of accumulated wage arrears in the public sector. As regards the wage debt, the technical committee estimated that public employees, including fixed and short-term staff as well as support or project personnel, experienced serious problems with the regular payment of their wages during two distinct periods, i.e. from 1992 to 1993 and again from 1998 to 2003. According to the technical committee's report, this prolonged situation of non-payment of wages reduced civil servants to destitution and misery practically depriving them of access to even essential consumer goods. The technical committee concluded that the overall wage debt for both periods amounted to CFA70.05 billion (approximately US\$143 million) and formulated three alternative proposals concerning a possible time framework for the partial or total settlement of such debt.

While taking due note of the findings and recommendations of the joint technical committee, which confirm the gravity and extent of the problem of unpaid wages in the public sector, the Committee notes with concern that the Government's report does not contain any indication as to the follow-up action it intends to take. ***In the light of the findings and recommendations of the joint technical committee established to determine the amount of accumulated wage arrears in the public sector, the Committee urges the Government to take the necessary steps in order to implement a time-bound plan for the final settlement of all outstanding wage payments.***

In addition, the Committee understands that the Government has recently received financial assistance from international institutions and donor countries, such as the European Union, the African Development Bank and the Government of France, in part to help its arrears clearance operations. ***The Committee asks the Government to provide detailed particulars on any arrangements which may have been put in place or envisaged as regards the use of the foreign assistance in tackling the ongoing wage crisis.***

## Colombia

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1963)**

The Committee notes the communications of the Union of Maritime and River Transport Workers (UNIMAR), dated 25 June 2007, and of the Colombian Association of Airline Pilots (ACDAC), dated 25 May 2007, which were forwarded to the Government on 20 August 2007. Both communications follow up on previous observations made by the same organizations concerning the alleged violation of the principles set out in *Articles 11 and 12 of the Convention* on account of the Government's failure to protect workers' wage claims in insolvency proceedings and to prevent the accumulation of wage arrears in certain public and private sector enterprises. With regard to the ongoing liquidation process of the Merchant Navy Investment Company SA (formerly the Grancolombian Merchant Navy SA), UNIMAR claims this process is flawed on multiple grounds and calls for the settlement of all outstanding payments to the former employees of the enterprise. ACDAC, for its part, draws attention to the alarming situation of the Airline Pilots'

Providence Fund (CAXDAC) and its growing deficit which is due to the fact that the Government has not prevented for many years so-called “non-contributing airline companies” to file for bankruptcy without having first paid all outstanding contributions to the Fund.

*The Committee requests that the Government transmits its comments in this regard so that it may examine these points at its next meeting. In addition, the Committee asks the Government to keep it informed of any developments concerning the matters raised in its previous observation, in particular the settlement of outstanding payments to the employees of the public hospital San Juan de Dios following the comments of the National Association of Health, Social Security and Allied Service Workers and Public Employees (ANTHOC).*

## Comoros

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1978)

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

The Committee recalls its previous comments in which it noted that despite the establishment of the Higher Council of Labour and Employment (CSTE), no minimum wage rates had been fixed in recent years and that the wage levels applied in practice no longer reflected the economic or social realities in the country. In its reply, the Government stated that the CSTE had held its first meeting and had agreed on a draft text setting the guaranteed interoccupational minimum wage (SMIG) at KMF35,000. According to the Government’s last report, the draft text was currently before the competent authorities for signature.

*The Committee requests the Government to supply in its next report additional information on the first meeting of the CSTE, including full particulars on the participation, the views expressed by the social partners, the criteria taken into account in fixing the SMIG level, the coverage of the new minimum wage rate as well as any consideration given to the problem of the periodic review or readjustment of the SMIG. The Committee hopes that the decree regarding the determination of the guaranteed interoccupational minimum wage will take effect very shortly and requests the Government to transmit a copy of that text once it has been formally adopted. In addition the Committee asks the Government in its next and subsequent reports to provide information on the practical application of the Convention as required by Article 5 of the Convention and 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.*

## Congo

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

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

With regard to the accumulated wage arrears owing to state employees, the Committee notes from the Government’s last report that the wage debt is estimated at CFA187.6 billion which corresponds to the wage bill of 23 months. The Government stated that in accordance with the Protocol of Agreement of 9 August 2003, the settlement of outstanding payments should commence in the fourth quarter of 2004. The Government added that since 2000 all steps had been taken to prevent the further deterioration of the situation and that currently state employees received their salaries regularly. *While noting the extent and seriousness of the ongoing wage crisis, the Committee requests the Government to transmit a copy of the above referenced Protocol of Agreement and to supply in its next report detailed information on the number of workers affected, the amount of arrears settled according to the terms of that Protocol and the time schedule for the repayment of the sums remaining due. The Committee urges the Government to accelerate its efforts to put an end to the phenomenon of delayed payment or non-payment of wages.* It wishes to refer, in this connection, to paragraph 355 of its 2003 General Survey on the protection of wages in which it pointed out that the quintessence of wage protection is the assurance of a periodic payment allowing the worker to organize his everyday life with a reasonable degree of certainty and security whereas the delayed payment of wages or the accumulation of wage debts clearly contravene the letter and the spirit of the Convention and render the application of most of its other provisions simply meaningless.

With respect to the payment of the sums due to the former workers of the Ogoué Mining Company (COMILOG) to which the Committee has been drawing attention for several years, the Committee notes the Government’s indication that the question has been discussed with the Government of Gabon at Libreville in July 2003. More concretely, the Government referred to a Protocol of Agreement signed on 19 July 2003 according to which COMILOG accepted to pay a lump sum of CFA1.2 billion in final settlement of all workers’ claims and ceded to the Government of the Republic of the Congo the proprietary rights to all its movable and immovable assets in the country. The Government further stated that the reimbursement of the amounts due to the former workers of COMILOG can thus be effected once the practical arrangements for such payment have been settled. The Committee notes the positive developments with regard to the recovery by the former workers of COMILOG of all the amounts due to them some ten years after the matter was first brought to the knowledge of the International Labour Office. In this regard, the Committee wishes to reiterate, as it observed in paragraph 398 of the abovementioned General Survey, that the principle of the regular payment of wages, set out in *Article 12 of the Convention*, finds its full expression not only in the periodicity of wage payments, as may be regulated by national laws and regulations or collective agreements, but also in the complementary obligation to settle swiftly and in full all outstanding payments upon the termination of the contract of employment. *The Committee therefore asks the Government to speed up and closely monitor the process of settling the outstanding payments to the workers concerned and to supply in its next report full particulars on the progress made in this regard. The Committee would also appreciate receiving a copy of the Protocol of Agreement of 19 July 2003.*

*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

### **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:

The Committee notes the Government's indication in its 2002 report that it had made efforts to harmonize its legislation with the provisions of the Convention by establishing a follow-up committee for the agreements ratified by the Ministry of Human Rights. The Committee notes with regret that, despite the observations that it has been making on this matter since 1991, legislation has still not been adopted to give full effect to the Convention.

The Committee recalls in this respect that the essential purpose of the Convention is to ensure that, through the insertion of appropriate labour clauses in public contracts, the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as the wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise. Such protection is deemed to be necessary because this category of workers may not be covered by collective agreements and other measures regulating wages, and is often more exposed than others because of the competition between firms tendering for public contracts. Furthermore, the Committee deems it important to emphasize that the protection provided through labour clauses in public contracts cannot normally be ensured through the application of the general labour legislation only. This is due first of all to the fact that there are many countries in which the minimum standards fixed by law are improved upon by means of collective bargaining or otherwise. Thus, even where fairly extensive labour legislation exists and is properly applied, the inclusion of labour clauses in public contracts can serve a very useful purpose in ensuring fair wages and conditions of labour for the workers concerned. Secondly, it is due to the fact that the provision of penalties, such as the withholding of contracts, as envisaged in the Convention, makes it possible to impose sanctions in case of violations of the labour clauses in the public contracts which may be more directly effective than those applicable for infringements of the general labour legislation.

*The Committee therefore urges the Government to take all the necessary measures to bring the national legislation into conformity with the provisions of the Convention and reminds it of the possibility of seeking the technical assistance of the International Labour Office for this purpose.*

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

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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.

## Djibouti

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1978)

The Committee regrets that the Government's report does not contain any reply to the points raised in the Committee's previous observation following up on the conclusions of the discussion that took place in the Committee on the Application of Standards at the 95th Session of the International Labour Conference (June 2006). The Government essentially reiterates that the system of guaranteed interoccupational minimum wage (SMIG) has been abolished to leave the minimum wage determination to collective bargaining and the law of supply and demand without responding to the concerns expressed by the Conference Committee that, by dismantling the SMIG, large numbers of workers who might not be covered by collective agreements would be deprived of any protection with regard to decent wage levels. *The Committee asks the Government to specify in its next report: (i) how it is ensured that collectively agreed minimum wage rates have the force of law and may not be lowered and their non-observance is subject to sanctions; (ii) whether those workers whose remuneration is not regulated by means of collective agreement enjoy any protection as far as minimum acceptable pay rates are concerned.*

Moreover, the Committee notes the observations made by the Workers' Union of Djibouti (UDT) concerning the application of the Convention. According to the UDT, before its abolition the minimum wage system was based on the collective agreement of 1973, as revised in 1976, which set a monthly minimum wage at DJF17,500 (approximately US\$100). The new Labour Code of 2006 (Act No. 133/AN/05/5ème L) follows the anti-social orientation of the previous Labour Code of 1997 and makes no provision for a minimum wage system. The UDT indicates that, in practice, the wage scales established in the collective agreement of 1976 continue to apply in the public sector despite the fact that the cost of living has quadrupled in the past 30 years. It also indicates that certain categories of workers, such as dockworkers, domestic workers and shop employees, are regularly paid at rates much lower than the minimum rates provided for in the 1976 collective agreement, and are deprived of any means of action in the light of the unemployment rate estimated at 70 per cent of the active population and the poverty affecting 64 per cent of the population. According to the UDT, only the establishment and operation of a minimum wage fixing machinery, as well as the adoption of legislation enabling workers to recover by judicial means wages to which they are entitled in case of sub-minimum payment, can provide to workers a

decent standard of living in conformity with the Convention and the UN Covenant on Economic, Social and Cultural Rights. *The Committee requests the Government to transmit any comments it may wish to make in reply to the points raised by the UDT.*

[The Government is asked to reply in detail to the present comments in 2008.]

**Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**  
(ratification: 1978)

Further to its previous observations, the Committee regrets 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 the past 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 it 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 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 seizes this opportunity to refer to this year's General Survey 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.

[The Government is asked to reply in detail to the present comments in 2008.]

**Protection of Wages Convention, 1949 (No. 95) (ratification: 1978)**

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 (Act No. 133/AN/05/5ème L), 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. It also asks the Government to transmit its observations on the issues raised in its previous comment concerning the application of Articles 8 (wage deductions for deposits prescribed by individual contracts of employment) and 12 (nature and scale of the problem of wage arrears in the public sector) of the Convention.*

**Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)**  
(ratification: 1978)

The Committee notes the observations of the General Union of Djibouti Workers (UGTD) on the application of the Convention, which were received on 23 August 2007 and transmitted to the Government on 21 September 2007. No reply has so far been received from the Government. The UGTD states that there is no longer a means to set minimum wages in the agricultural sector, as the Labour Code currently in force (Act No. 133/AN/05/5ème L) does not provide for the system of guaranteed interoccupational minimum wage (SMIG) and leaves the fixing of wage levels to individual agreement or collective bargaining. According to the UGTD, the dismantling of the SMIG has left workers without any safeguard with respect to income protection and has accentuated the sentiment of insecurity among the working people. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the UGTD.*

In addition, the Committee refers to the comments made under Convention No. 26.

## Dominica

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1983)

The Committee has been commenting for a number of years on the Government's failure to amend section 6(3) of the Labour Standards Act No. 2 of 1977 in order to give full effect to the requirements of the Convention with regard to the equal representation of employers' and workers' organizations in the operation of the minimum wage fixing machinery. The Committee has also been raising the question of the possible increase of the minimum wage which has not been revised since 1989.

In its last report, the Government merely indicates that, as regards the proposed legislative amendment, the Industrial Relations Advisory Committee (IRAC) will discuss this long outstanding issue and bring it to the attention of the Minister of Foreign Affairs, Trade and Labour. With regard to the readjustment of minimum wage levels, the Government contents itself to referring to the IRAC meeting of 9 March 2006 in which it was decided that a letter be written to the Minister requesting the immediate appointment of a minimum wage advisory board for the revision of the minimum wage, following, especially, the abortive attempt to have the minimum wage reviewed in 1997.

The Committee regrets that the Government has not so far taken any concrete action to follow up on the Committee's recommendations. The participation of employers and workers concerned in equal numbers and on equal terms is an essential prerequisite for the functioning of a minimum wage system based on full and genuine consultations with the social partners as prescribed by the Convention. In addition, the Committee insists that the minimum wage has to maintain its purchasing power in relation to a basic basket of essential consumer goods if it is to serve a useful purpose in terms of social protection and poverty reduction. This, in turn, can only be attained by periodically revising minimum wage levels in the light of the evolving economic and social realities. *The Committee therefore urges the Government to take appropriate action without further delay in order to bring the national law and practice into line with the provisions of the Convention.*

[The Government is asked to reply in detail to the present comments in 2008.]

## France

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1951)

The Committee notes the Government's confirmation in its last report that the new Public Procurement Code, adopted by Decree No. 2006-975 of 1 August 2006, no longer gives effect to the Convention, in contrast with the Public Procurement Code of 1964. *The Committee requests the Government to reply to the detailed comments that it made at its previous session and to indicate the reasons why the Public Procurement Code of 2006 does not contain provisions giving effect to the Convention.*

The Committee also draws the Government's attention to the General Survey that it has prepared this year on labour clauses in public contracts, which gives an overview of the law and practice of member States on this subject and contains an assessment of the impact and current relevance of Convention No. 94.

[The Government is asked to reply in detail to the present comments in 2008.]

## Martinique

### **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:

*The Committee asks the Government to refer to its observation on the application of the Convention by France. Moreover, the Committee once again asks the Government to respond to its previous comments concerning the widespread outsourcing practices in the construction and public works sector, and the measures taken to give effect to the Convention in relation to subcontractors or assignees of public contracts and the results achieved.*

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

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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.

## New Caledonia

### **Protection of Wages Convention, 1949 (No. 95)**

Further to its previous comments on the need to set out in specific legislation the principles laid down in several Articles of the Convention, the Committee notes the Government's statement in its report that the Convention is fully applied and its reference in this respect to territorial Act No. 2002-021 of 20 September 2002, respecting the rules applicable to enterprises established outside New Caledonia and engaged in the provision of services with salaried employees, which amends Ordinance No. 85-1181 of 13 November 1985, as amended, respecting the guiding principles of labour law and the organization and operation of the labour inspectorate and the labour tribunal in New Caledonia, as well as Congress resolution No. 302 of 27 August 2002 giving effect to the above territorial Act (hereinafter, "resolution No. 302"). However, the Committee is bound to note that this Act, as indicated by its title, does not apply to workers employed by enterprises established on the territory of New Caledonia and that its provisions may therefore only be deemed to give effect to the Convention for a strictly limited number of workers (namely, detached workers, for a maximum period of between one and three years). ***The Committee therefore once again requests the Government to provide all relevant information on the application of the following provisions of the Convention.***

***Article 1 of the Convention. Definition of wages.*** The Committee notes that only section 23 of resolution No. 284 of 24 February 1988 respecting wages contains a definition of wages, namely the "amounts due in respect of remuneration to all persons employed or working, in whatever capacity or location, for one or more employers, irrespective of the amount and nature of their remuneration, the form and nature of their contract". However, the Committee notes that this definition is only valid for the application of the provisions of the resolution relating to the attachment by order or the assignment of remuneration owed by an employer, and not for the application of the resolution as a whole. ***The Committee therefore requests the Government to indicate whether other provisions of laws or regulations contain a definition of wages.***

***Article 2. Scope of application.*** The Committee notes that under the terms of section 1, Ordinance No. 85-1181 of 13 November 1985 respecting the guiding principles of labour law and the organization and operation of the labour inspectorate and the labour tribunal in New Caledonia and its dependent territories (hereinafter, Ordinance No. 85-1181) is not applicable, unless otherwise provided, to persons covered by the conditions of service of public employees or by public law. ***The Committee requests the Government to indicate the provisions which guarantee the protection of wages for workers who are thus excluded from the scope of application of this Ordinance.***

***Article 4. Partial payment of wages in kind.*** The Committee notes sections 6 to 9 of resolution No. 302, which are in conformity with Article 4 of the Convention, but only apply to enterprises established outside New Caledonia and engaged in the provision of services with employed staff. ***The Committee hopes that the Government will adopt provisions in the near future which are of general application in order to give effect to this provision of the Convention, for example modelled on those contained in resolution No. 302.***

***Article 5. Payment of wages directly to the worker concerned.*** The Committee notes that under the terms of section 24 of Ordinance No. 85-1181, wages must be paid in legal tender, but that there is no provision establishing that wages must be paid directly to the worker, to the exclusion of any other person, as required by the Convention. ***The Committee requests the Government to indicate the manner in which compliance with this rule is ensured.***

***Article 6. Freedom of workers to dispose of their wages.*** The Committee recalls that the requirements set out in Article 6 of the Convention are intended to protect the full discretion of workers as to the use they wish to make of their wages against any kind of constraint that an employer might exert in this regard (for example, the obligation to place part of their earnings in a works savings fund). ***The Committee requests the Government to provide information on the measures adopted or envisaged to give effect to this provision of the Convention.***

***Article 7. Works stores.*** The Committee notes section 13 of resolution No. 302, which is in conformity with Article 7 of the Convention, but only applies to enterprises established outside New Caledonia which are engaged in the provision of services through salaried staff. ***The Committee hopes that the Government will adopt provisions in the near future that are of general application giving effect to this provision of the Convention, based for example on those contained in resolution No. 302.***

***Article 9. Payment by a worker for the purpose of obtaining or retaining employment.*** The Committee notes that, by virtue of section 22 of resolution No. 284 of 24 February 1988 respecting wages, it is prohibited in hotels, cafés, restaurants and similar undertakings, in artistic performance enterprises, as well as in those engaged in navigation and transport, to require workers to make payments of money or to make deductions at the time of recruitment or dismissal, or during the normal performance of work by such employed persons. However, the Committee emphasizes that the prohibition laid down in Article 9 of the Convention is general in its scope and is not therefore intended solely to protect workers in certain sectors of activity. ***The Committee accordingly requests the Government to indicate the provisions which prohibit, in sectors not covered by section 22 of resolution No. 284, any deduction from wages with a view to obtaining or retaining employment.***

***Article 10. Attachment and assignment of wages.*** The Committee notes that Ordinance No. 98-522 of 24 June 1998 updating and adapting labour law in the overseas territories, communities and departments introduced section 28(2) into Ordinance No. 85-1181, under the terms of which the amounts due in respect of remuneration may only be attached or

assigned to the extent and within the remuneration thresholds determined by Congress resolution. *The Committee requests the Government to indicate whether the Congress has adopted a resolution under this Ordinance determining the extent to which wages may be attached or assigned and, if so, to provide a copy.*

*Article 13. Place and date of the payment of wages.* The Committee notes section 12 of resolution No. 302, which is in accordance with *Article 13* of the Convention, but only applies to enterprises established outside New Caledonia which are engaged in the provision of services through salaried staff. *The Committee hopes that the Government will adopt provisions in the near future that are general in scope in order to give effect to this provision of the Convention, based for example on those contained in resolution No. 302.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Greece

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1955)**

Further to its previous observations, the Committee notes the explanations provided by the Government concerning the application of *Articles 4 and 7 of the Convention*. It notes in particular that section 653 of the Civil Code in its current reading provides that “an employer is bound to pay the customary or agreed salary” no longer making reference to payment of wages in kind. It also notes that, according to the Government’s report, remuneration levels are determined through collective bargaining and that no labour collective agreement provides for the payment of wages in kind with the exception of certain allowances in kind which may only be granted in addition to, and not in substitution of even part of, the statutory wages. The Committee is satisfied that, under the terms of certain collective agreements concluded at the national, branch or enterprise levels that it has had the opportunity to consult, provision is made for allowances in kind (e.g. protective clothing or foodstuffs) but with the express caveat that the cash value of those allowances may not be counted in or otherwise deducted from collectively agreed pay.

In addition, the Committee notes the explanations with respect to outlet stores established within certain factories, which offer goods at prices lower than other department stores, as publicly monitored by the Price Control Service, and which are operated for the benefit of all consumers including the workers employed in the factories concerned.

Finally, the Committee notes the information provided by the Government concerning the practical application of the Convention, in particular the monetary fine provided for those employers violating the rules on remuneration laid down by labour collective agreements as well as the statistical data of the Labour Inspectorate Body (SEPE) according to which as much as 71.2 per cent of all complaints concern non-payment of wages for work already performed. *The Committee would appreciate if the Government would continue to provide, in accordance with Part V of the report form, up to date information on the application of the Convention in practice.*

## Guinea

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1959)**

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

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

The Committee regrets that the Government's report of 2006 contained no reply to its previous comments but essentially reproduced information already submitted in earlier reports which the Committee had considered to be strictly irrelevant to the scope and content of the Convention. The Committee is once again led to conclude that for the last 40 years there has been practically no progress in implementing the provisions of the Convention in either law or practice. The Committee expresses its deep disappointment about the Government's continued failure to apply the Convention despite the technical assistance provided by the Office in 1981 and the numerous commitments made by the Government, ever since, as regards the drafting and adoption of specific regulations or legislation concerning public contracts. *Under the circumstances, the Committee hopes that the Government will make a sincere effort to maintain a meaningful dialogue with the ILO supervisory bodies and once more urges the Government to take all necessary measures without further delay in order to bring its national law and practice into conformity with the clear terms and objectives of the Convention.*

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

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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.

**Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)**  
(ratification: 1966)

The Committee notes with regret that the Government's report has not been received and therefore once more refers the Government to the comments made under Convention No. 26.

## India

**Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)**  
(ratification: 1955)

Further to its previous observation, the Committee notes the Government's detailed explanations in reply to the comments made by the Centre of Indian Trade Unions (CITU). According to the Government's report, the Labour Bureau of the Ministry of Labour and Employment prepared the new series of consumer price index numbers for industrial workers with all due process, including broad consultations with different stakeholders such as trade unions, employers' associations and government departments. More concretely, during the conduct of pilot surveys for the establishment of price collection machinery in 78 centres, various trade unions were consulted on different matters, such as the selection of markets, selection of shops, fixing of specifications of items, fixing of price collection days, appointment of price collection personnel, etc.

Regarding the alleged manipulations in price collection, the Government states that price data and the price collection system is fully transparent, while price data used are available for inspection of the various stakeholders in the regional offices of the Bureau. It adds that the decision to include representatives of employers' and workers' organizations in the Technical Advisory Committee on Statistics and Prices and Cost of Living (TAC on SPCL) has provided further transparency to the system. The decision to associate three members representing all central trade unions and employers' organizations with the Technical Advisory Committee was taken in September 2005 and the Technical Committee in its new composition met in February 2006 to discuss suitable steps for the improvement of the quality of the index.

On the question of defects found in the compilation of consumer price index numbers by independent experts, the Government admits that in the past review exercises have resulted in various recommendations, most of which have already been implemented. In response to the CITU's persistent request for the appointment of a new review committee to devise a truly transparent mechanism for compiling the cost of living indices, the Government indicates that it has agreed to the appointment of another Index Review Committee and has already initiated appropriate action to this end, but strongly denies all charges of irregularities and faulty methodology in the compilation of consumer price index numbers for industrial workers.

The Committee is satisfied that the Government makes serious efforts to ensure accurate and reliable price data for the purpose of periodic minimum wage adjustment. It appreciates in particular the fact that the TAC on SPCL now operates with a tripartite membership and that the Government commits itself to carefully considering the views expressed by all TAC members and implementing their recommendations. *The Committee hopes that the new Index Review*

*Committee will be established shortly and requests the Government to keep it informed of any developments in this regard. It also asks the Government to continue to supply documented information on the activities of the TAC on SPCL and any measures taken to follow up on its proposals.*

In addition, the Committee notes that certain other points raised in its last observation have not been addressed by the Government's report. *It therefore requests the Government to provide in its next report full particulars on any new categories of workers coming under the scope of the Minimum Wages Act, 1948; any progress made in the process of a comprehensive amendment of the Minimum Wages Act; the means for promoting compliance with the national floor-level minimum wage (NFLMW) and its possible revision; the method used for fixing the uniform minimum wage for agricultural workers and the consultations held before the introduction of the National Rural Employment Guarantee Scheme; the operation of the minimum wage fixing machinery at the state/territory level; and statistical information concerning the enforcement of the legislation on minimum wages.*

## Islamic Republic of Iran

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1972)**

Further to its previous comments, the Committee notes the Office report following the mission to the Islamic Republic of Iran undertaken from 26 October to 1 November 2007. The six-day mission was scheduled as a follow-up to the discussion concerning the application of the Convention that took place in the Conference Committee on the Application of Standards in June 2007. As requested by the Conference Committee, the conclusions of the ILO mission relating to the application of Convention No. 95 are reproduced below.

The Committee notes that the main purpose of the ILO mission was to obtain a better sense of the nature and extent of the problem of wage arrears, principally by collecting concrete figures on wage arrears and the number of affected workers as well as up to date information on measures taken by the Government in order to tackle the problem of delayed payment of wages. It also notes that the mission included a senior statistician from the ILO Bureau of Statistics with a view to evaluating any available statistical data relating to the non-payment of wages and advising the Government on how to improve the collection of such data.

The Committee takes note of the main findings and conclusions of the ILO mission concerning the problem of wage arrears which read as follows:

#### **IV. Main findings**

117. The mission had a full range of intense and instructive meetings with government officials and representatives of other public institutions, employers' and workers' organizations, and civil society associations. Three major issues were addressed in a series of joint or separate group meetings: (i) the application of Convention No. 95 with special reference to wage arrears; (ii) the application of Convention No. 111 with special focus on gender equality and the protection of ethnic and religious minorities; (iii) freedom of association issues including the situation of employers' and workers' organizations in the country. The Government once again fully cooperated with the mission enabling it to complete its work. The dialogue was frank and information was forthcoming.

##### *1. The problem of wage arrears*

118. The principal purpose of the mission was the collection of statistical information on the problems of non-payment or delayed payment of wages in industries experiencing financial difficulties. In this regard, the mission obtained a significant amount of information and data allowing a better understanding of the socio-economic context in which the phenomenon of wage arrears persists. The Islamic Republic of Iran has embarked on an extensive programme of privatization and therefore its national economy is clearly in transition. Most of the problems it is currently facing are structural and are not expected to disappear in the immediate future. International competition and the country's current political context heavily impact on its export trade and further deepen the crisis in the textile industry. The Government has continued to inject billions of dollars in the form of financial aid to enterprises in difficulty due to the social implications for employment and unemployment as well as the increasing demographic growth rate.

119. At present, statistical standard forms or labour inspection procedures are not designed to capture specific information on wage arrears (e.g. sectors or regions affected, delay in weeks or months, etc.) and the only available data that can provide a rough idea of the extent of the problem come from the number of individual or collective complaints filed with the dispute settlement boards. Concrete proposals were made in this respect to the officials of the Statistical Centre and of the Labour Market Information and Statistics Centre of the Ministry of Labour and Social Affairs and reassurances were given that wage arrears would be better monitored in the future.

## Statistics concerning the situation of wage arrears in the Islamic Republic of Iran

<b>Scale of wage arrears</b>		
Estimated 85,000 workers (out of total workforce of 7 million) experiencing delay in the payment of their wages in the last 12 months		
<b>Labour inspection activities (results between March–September 2007)</b>		
Number of total inspection visits		179 584
Number of inspections on wage issues (10 per cent of all inspection activities)		18 450
<b>Available remedies</b>		
<b>Legal decisions</b>	<b>No. of cases</b>	<b>No. of workers concerned</b>
Inquiry boards	28 240	32 777
Dispute settlement boards (following the appeal of 10,206 inquiry board decisions)	7 870	9 700
<b>Financial assistance provided to enterprises in difficulty</b>		
Amount of subsidies	7 037 831 million rials (approx. US\$755 million)	
Number of jobs saved	422 360	

120. Based on the number of cases filed with and settled by the inquiry boards and dispute settlement boards, it is estimated that approximately 85,000 workers were affected by wage arrears in the last 12 months. The largest number of complaints (4,936) were filed in Esfahan province and the lowest number (83) in North Khosaran province. The 2007 statistics represented a 23 per cent decrease as compared to the number of complaints filed in 2006 and a further 11 per cent decrease as compared to those filed in 2005. With respect to enforcement, 10 per cent of all labour inspection activities concerned wage issues, mostly cases referred by the dispute settlement boards for follow-up action. Out of a total 10,200 plants in the textile sector, around 100 plants reported occasional difficulties with the payment of wages. In the last 12 months, the situation improved in certain provinces, such as the Qazvin province, but problems persisted elsewhere. The mission was provided with general information that other branches of economic activity, such as the sugar cane industry, are experiencing pay problems, but it was not possible in the time available to obtain any concrete information on the situation in sugar cane factories.

...

## V. Conclusions

### *Protection of wages*

137. Based on the oral and written information obtained, the mission concludes that, although the Government is continuing to take action to support enterprises experiencing difficulties with wage arrears, the problem continues to affect large numbers of textile workers. Other industrial sectors, such as the sugar industry, are most probably experiencing similar problems. The Government admits the existence of the problem but maintains that it is a limited and unfortunate side-effect of expanding privatization, low productivity and competitiveness of the domestic textile sector and negative external factors. The mission is mindful of the continued efforts of the Government to keep enterprises afloat and save jobs by massively subsidizing enterprises that are experiencing difficulties. The mission believes, however, that the Government must address the structural deficiencies of the national economy with a long-term strategy for strengthening the productivity and sustainability of private enterprises. It must bolster and speed up the current privatization efforts on the way, providing economic space for enterprises and continue to strengthen democratic institutions, in accordance with article 44 of the Constitution of the Islamic Republic of Iran and article 145 of the Law of the Fourth Economic, Social and Cultural Development Plan, 2005–09, which was enacted on 1 September 2004. The mission reaffirms the importance of closely monitoring the evolving of the situation with respect to wage arrears, and, in this connection, emphasizes the need for reliable statistics. The mission therefore encourages the Government to continue to avail itself of the technical assistance of the Office in relation to data collection.

Having duly examined the Office report, the Committee notes that the discussions with government officials, public institutions and employers' and workers' organizations were once more open, direct and constructive and helped to further clarify the situation with regard to wage arrears experienced in certain sectors of the economy of the Islamic Republic of Iran. While noting that action is being taken by the Government to address problems faced by enterprises experiencing wage arrears, the Committee remains concerned about the fact that the problem of unpaid wages continues to affect tens of thousands of textile workers. It also notes that the problem would appear to occur in other branches of economic activity such as the sugar cane industry. ***Noting that the situation is at present inadequately monitored as standard documents used by the labour inspection services are not designed to capture information on wage arrears, the Committee requests the Government to take the necessary steps to ensure that the ongoing situation of unpaid wages is kept under close supervision and constant assessment through the systematic collection of relevant information. The Committee also requests the Government to continue to provide detailed information on the evolving of the situation as well as on any new measures taken or planned with a view to settling all outstanding payments and preventing the recurrence or expansion of the problem that clearly contravenes the letter and the spirit of Convention No. 95.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Iraq

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

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

1. The Committee has been commenting on the measures to be taken following the recommendations of the tripartite committee set up to examine the representation made by the Federation of Egyptian Trade Unions under article 24 of the ILO Constitution, alleging non-observance by Iraq, inter alia, of the Convention (GB.250/15/25, May–June 1991), concerning non-payment of wages owed to Egyptian workers employed in Iraq, who left the country both before and after the invasion of Kuwait. In its previous observation, the Committee noted the Government's earlier indication that the workers who left since the imposition of the embargo, which resulted in the freezing of Iraqi assets in foreign banks, received their wages in conformity with the law, with the exception of the percentage to be transferred in foreign currency. In this connection, the Government indicated in its report that, although the Off-America Bank of New York had released an amount of US\$20 million from the deposit owned by the Iraqi Rafedain Bank's Cairo Branch to cover some of the Bank's outstanding transfers, none of the suspended outstanding transfers had been paid by the Cairo Branch of the Rafedain Bank.

The Committee recalls that the above tripartite committee made recommendations in its report, which was approved by the Governing Body of the ILO, that the Government should: (i) take appropriate measures so that the number of workers involved and the amounts owed to them will be determined; and (ii) take measures necessary for the effective payment of such amounts. The Committee notes that no specific information has been received on either of these points. ***It is therefore obliged to repeat its hope that the Government will take all the necessary measures and provide information on them.***

2. The Committee notes the copy of the Labour Movement Agreement concluded between Iraq and the Philippines, attached to the report. It notes that, under article 12 of this Agreement, the workers employed under the agreement may transfer a percentage of their income through the normal banking channels in accordance with the receiving country's instructions and regulations on foreign transfers. ***The Committee requests the Government to clarify up to what percentage of the income the workers are allowed to remit under this provision. It would also be grateful if the Government would supply further information on the relevant instructions and regulations on foreign transfer.***

3. The Committee recalls that it has noted, in its earlier observation, section 7 of the Labour Code which prescribes the treatment of Arab workers on an equal footing with Iraqi workers in regard to the rights and duties set forth in the Code, and an Agreement between Iraq and the Philippines stipulating the reciprocal equal treatment of migrant workers and nationals. ***The Committee again requests the Government to supply information concerning the protection of wages of non-Arab foreign workers who are not from the Philippines.***

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

## Italy

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1952)**

The Committee has been drawing attention for a number of years to section 2099 of the Civil Code which is worded in a manner that does not exclude the possibility – however theoretical this may appear in modern labour market conditions – of workers' wages being paid entirely in kind. It has been pointed out that even though the payment of wages in kind may nowadays be practised only partially or marginally (especially in domestic and agricultural work, fishing and portage) as the Government indicates, *Article 4 of the Convention* is among the provisions of the Convention that are not self-executing and therefore require specific measures by the competent authorities in order to be implemented.

In its last report, the Government refers to section 36 of the Constitution which guarantees the workers' right to remuneration commensurate with the quantity and quality of their work and in any case sufficient to provide them and their family with a free and decent living. The Committee takes note of the Government's explanations concerning the constitutional safeguards on remuneration but considers that these observations are not strictly relevant to the point raised by the Committee. The Committee is therefore bound to reiterate that the national legislation is not in full conformity with the Convention to the extent to which section 2099 of the Civil Code continues to apply and the possibility of the payment of wages wholly in kind still remains. In this connection, the Committee wishes to refer to paragraphs 114 to 126 of its 2003 General Survey on protection of wages in which it analysed the principle of the partial payment of wages in kind in the light of relevant law and practice. ***The Committee once again expresses its firm hope that the Government will take appropriate action shortly and requests the Government to keep it informed of all future developments in this regard.***

## Libyan Arab Jamahiriya

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1962)**

The Committee recalls its previous observations concerning the recurrent incidents surrounding the massive expulsion of foreign undocumented workers and the alleged non-payment of wages owed to those workers. The Committee notes the Government's report as well as the report of the technical assistance mission to the Libyan Arab Jamahiriya undertaken by the Office in July 2007. The five-day mission was scheduled as a follow-up to the discussion that took place in the Conference Committee on the Application of Standards in June 2006. The purpose of the technical assistance mission was principally to assess the current situation with respect to the treatment of irregular foreign workers in the light of the requirements of Conventions Nos 95 and 111, and to obtain information on any concrete measures the

Government might have taken in this regard. The mission was also to address broader issues concerning the application of ratified Conventions in the light of the Committee's pending comments and to evaluate the need for technical assistance in order to formulate initial proposals for targeted initiatives.

Having duly examined the Office report, the Committee is satisfied that a series of open and constructive discussions with government officials, public institutions and employers' and workers' organizations – characterized by a high level of cooperation on the part of the Libyan authorities – permitted the clarification of a number of issues and a direct dialogue on certain recent legislative developments affecting the application of Convention No. 95. The Committee notes with interest, in particular, the adoption of a Ministerial decision for the regularization of foreign workers and the contractual arrangements put in place to prevent the recurrence of past incidents as well as the establishment of a multi-ministerial committee with the participation of the workers' organization to resolve any claims illegal immigrants might have before deportation orders can be issued.

More concretely, the Committee notes that according to Decision No. 20/2007 of the General People's Committee for Manpower, Training and Employment on some provisions concerning the organization, import and employment of foreign labour, anyone wishing to enter the country for work would hereafter be obliged to conclude an employment contract in advance and have that contract endorsed by the Libyan authorities in the country of origin whilst all foreign workers currently present in the country would have until 31 July 2007 to regularize their situation by undergoing a medical examination and obtaining a valid employment contract. Moreover, by Decision No. 56/2006 of the Council of Ministers, a multi-stakeholder committee – composed of members of the security forces, immigration services, consular services, the Ministries of Manpower and Foreign Affairs and also workers' representatives – was set up with a view to examining any claims irregular foreign workers might have before being expelled from the country. According to the new arrangement, undocumented foreign workers who have wage-related claims could not be expelled until such claims are reviewed and they sign a document certifying that all outstanding payments have been settled. The Committee welcomes these developments and will be interested to learn of their effectiveness in preventing the recurrence of events such as those which occurred in three distinct periods in the past. It recalls, in this connection, that Convention No. 95 covers regular and irregular workers alike in so far as the payment of wages on time and in full is concerned, and therefore matters such as immigration policy or administrative measures against clandestine workers should not impact on its application. ***The Committee therefore requests the Government to provide detailed information, including all available statistics, on the practical implementation of the new measures concerning the regularization of foreign workers and the setting up of the standing committee to review claims of irregular workers facing expulsion.***

In addition, the Committee notes that according to the information provided by the Government in its last report, the total number of workers from neighbouring countries who have been deported so far is 9,424 while the amount of US\$1.88 million has been paid to them in the form of pocket money before their departure. ***As it is not clear to which period the above statistical information refers, the Committee would be grateful if the Government would provide additional explanations in this respect.***

As regards the application of *Articles 2, 4, 7 and 8 of the Convention*, the Committee notes the explanations given by the Government to the technical assistance mission concerning the provisions of existing legislation and the commitment to amend the relevant provisions of the Labour Code concerning the coverage of agricultural workers and the setting of an overall limit to the permissible amount of payment in kind. In this respect, the Committee understands that a copy of the draft Labour Relations Act in its current reading has been submitted to the Office for technical comments. It also understands that the new draft legislation, which is now before the General People's Congress for review, is a consolidated text composed of three parts, one on the employment relationship and labour conditions, one on the public service, and one on industrial relations. ***The Committee asks the Government to keep it informed of any developments regarding the finalization and adoption of the new Labour Relations Act, in particular, any legislative changes following up on the recommendations of the ILO technical assistance mission.***

### ***Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1971)***

Further to its previous comments, the Committee notes the Office report following the mission to the Libyan Arab Jamahiriya undertaken from 1 to 6 July 2007. The mission was scheduled as a follow-up to the discussion concerning the application of the Protection of Wages Convention, 1949 (No. 95) that took place in the Conference Committee on the Application of Standards in June 2006. The Committee notes, in particular, that even though the main purpose of the ILO mission was to assess the current situation with respect to the treatment of foreign workers in the light of the requirements of Conventions Nos 95 and 111 and to obtain information on any concrete measures taken in this regard, clarifications were also sought and explanations were given on the application of Convention No. 131 and the functioning of the minimum wage fixing machinery.

According to the information provided by the Government, the Wages Board referred to in section 108 of the Labour Code was established in August 2006 for the purpose of preparing a proposal on the amount of the minimum wage based on the cost of living and other relevant data. Upon receiving the recommendation of the Wages Board, the General People's Committee, by Decision No. 2/2007, set the national minimum wage at 250 dinars (approximately US\$206) per month. Regarding the composition of the Wages Board, the Government provided a copy of the Decision of the Secretary of the General People's Committee for Manpower, Training and Employment No. 613/2006, concerning the organization

of the functioning of the Consultative Council for fixing wages, constituted by virtue of the Decision of the General People's Committee No. 105/2006, concerning the establishment of the Consultative Council for fixing wages. The Committee notes that the membership of the Wages Board includes representatives from the General People's Committees of Manpower and Economy, the Social Security Fund as well as the General Federation of Producers and the Chamber of Commerce. It also notes that the Board's mandate is to establish the general rules for determining wage levels in accordance with economic and social criteria and in line with the principles of justice and equity in order to increase productivity and set a sufficient level of wages that meets the basic workers' needs. The Committee further notes that provision is made for regular meetings of the Board once every three months and that the procedure for the revision of the minimum wage may be initiated whenever the Board considers it necessary. According to the Government's estimates, approximately 230,000 workers are presently remunerated at the minimum wage rate.

*The Committee notes with interest the latest developments regarding the establishment of the Wages Board and the determination of the national minimum wage and trusts that the Government will continue to provide detailed information on the operation of the Wages Board, the periodic review and adjustment of the national minimum wage and the implementation and enforcement of the minimum wage legislation in practice.*

## Mauritania

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1961)

The Committee notes the observations of the General Confederation of Workers of Mauritania (CGTM) concerning the application of the Convention, which were communicated on 3 September 2007 by the International Trade Union Confederation (ITUC). It notes that, according to the CGTM, in the private sector wages are only regulated in five branches, and that the situation has become worse with the abuse of occasional workers hired on a piecework basis. It further notes that, according to these observations, during the negotiations held in 2004 and 2005 between the social partners, it was agreed, among other matters, to renegotiate the collective agreements in all branches with a view to harmonizing wages and other working conditions with the rise in the interoccupational minimum wage (SMIG) and the socio-economic situation, but that these new negotiations were never held in view of the electoral process which continued up to the month of March 2007. The Committee also notes the CGTM's indication that, even though the level of the SMIG has been clearly improved since January 2005 and is currently 21,000 ouguiyas (approximately €60), compliance with the SMIG and its extension to all enterprises is not yet ensured. Furthermore, according to the CGTM, the wage-fixing machinery is not based on any national statistical study on living standards, gross domestic product or the economic growth of the country and consequently the purchasing power of workers remains very low in view of the very high inflation rate experienced in the country.

*The Committee requests the Government to provide its comments in reply to the CGTM's observations. The Government is also requested to reply to the direct request addressed to it in 2004.*

[The Government is asked to reply in detail to the present comments in 2008.]

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1963)

The Committee notes the observations received on 3 September 2007 from the General Confederation of Workers of Mauritania (CGTM), through the International Trade Union Confederation (ITUC). It notes the CGTM's indications that in Mauritania the labour administration, in the context of the attribution of public contracts by the National Contracts Commission, requires tendering enterprises to provide a certificate of conformity with labour regulations with a view to the acceptance of their tender. It further notes that on this occasion the labour directorate verifies the compliance by the enterprises concerned with the labour clauses contained in the regulations in force. The Committee however notes that, according to the CGTM, the adoption by Mauritania of economic liberalization policies has led to a deregulation of employment contracts and the development of fixed-term or temporary job offers. Finally, it notes that, in the view of the CGTM, supervision of compliance with labour clauses is not fully guaranteed, which leads to labour disputes within the selected enterprises, and that the labour administration should strengthen its capacities and provide upstream supervision of violations of labour regulations by these enterprises. *The Committee requests the Government to provide its comments on the CGTM's observations. The Government is also requested to reply to the direct request that the Committee made in 2005.*

The Committee also draws the Government's attention to the General Survey that it has carried out this year on labour clauses in public contracts, which gives an overview of the law and practice of member States in this field and provides an evaluation of the impact and current relevance of Convention No. 94.

[The Government is asked to reply in detail to the present comments in 2008.]

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)**

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

The Committee takes note of the Government's response in its 2004 report to the repeated comments concerning the settlement of all wages due to persons expelled from Mauritania following the events of April 1989. In its report, the Government stated that all those persons who had been forced to leave the country, who had had contracts of employment and who had returned following the normalization of the situation, had been reintegrated. The Government also stated that there were currently no requests or claims before the competent bodies and that important sums of money had been granted concerning this issue. Whilst noting the reassuring indications given by the Government stating that, since 1996, instructions have been given regarding the rapid and diligent processing of all requests from the workers concerned, the Committee is surprised that, 15 years after the events in question took place, the Government is still not in a position to supply the slightest concrete element or documented information corroborating its statements. ***It requests the Government to provide in this regard all necessary information. The Committee trusts that the Government will spare no effort in ensuring that, in the future, situations calling into question the principles of regular payment of wages and prompt settlement of wages upon the termination of employment will be examined with all the necessary rigour and efficiency to ensure the application of the Convention.***

***The Committee hopes that the Government will take the necessary measures to ensure that the abovementioned principles are respected.***

## Mauritius

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1969)**

The Committee notes the adoption of the Public Procurement Act of 2006, section 62 of which repealed the Central Tender Board Act of 2000. It notes, however, that this new legislation does not contain any provisions relating to the inclusion of labour clauses in public contracts. It also notes the Government's indications that the provisions of section 14 of the Labour Act would be transferred into the text of the new Public Procurement Act. The Committee recalls, however, that this provision does not ensure the application of the Convention. It states that assignees of public contracts will not receive the payments corresponding to the work performed unless they supply a certificate indicating, among other things, the wages and number of working hours of the various categories of workers employed for the execution of the contract and stating in particular whether remuneration is still due in this context, but without any indication regarding the prescribed level of wages or the authorized number of working hours.

The Committee draws the Government's attention to the essential obligation imposed by *Article 2* of the Convention, namely the inclusion in public contracts to which the Convention applies of clauses – the content of which should be the subject of tripartite consultations – ensuring to the workers concerned wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations. The Committee recalls that the Labour Clauses in Public Contracts Ordinance of 1964, which was repealed by the Labour Act of 1975, gave full effect to the provisions of the Convention. It notes the information in the Government's report to the effect that the Public Procurement Act would be amended to take account of the Committee's comments concerning the labour clauses which formed part of the Ordinance of 1964 referred to above. ***The Committee asks the Government to adopt without further delay the necessary measures to bring its legislation once again into conformity with the Convention and to keep it informed of all measures taken in this respect.***

In addition, the Committee notes the comments made by the Mauritius Employers' Federation, according to which the labour clauses contained in public contracts conform to the national labour legislation, including the Occupational Safety, Health and Welfare Act. ***It asks the Government to supply copies of public contracts containing labour clauses of the type mentioned by the Mauritius Employers' Federation.***

Moreover, the Committee notes the Government's information in its report with regard to the activities of the Central Tender Board. ***In view of the repeal of the Central Tender Board Act of 2000, the Committee asks the Government to supply up to date information on the functioning of the Central Procurement Board, established by the Public Procurement Act of 2006, and any other useful information on the application of the Convention in practice.***

Finally, the Committee draws the Government's attention to the General Survey which it undertook this year on labour clauses in public contracts, which presents the law and practice of the member States in this area, and also an evaluation of the impact and current relevance of Convention No. 94.

[The Government is asked to reply in detail to the present comments in 2008.]

## Republic of Moldova

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1996)**

*Partial payment of wages in kind.* The Committee notes the Government's statement that whereas the payment of wages in kind is in principle prohibited, there are still cases of wages being paid in the form of goods upon the specific request of the employee, or in accordance with regulations of certain agricultural units that permit supplementary payment in the form of agricultural products, such as wheat and sugar, and oil. It also notes that in the first five months of 2007, the cash equivalent of all payments in kind amounted to 5.9 million lei (approximately US\$515,635) that represents 0.0011

per cent of the total wage bill. *The Committee requests the Government to closely monitor the situation and keep it informed of any new developments in this regard.*

The Committee notes that according to the information provided by the Government, the labour inspection services and the trade unions did not report any instances of payment of wages in the form of alcoholic drinks, narcotic substances or tobacco products during this reporting period. *The Committee welcomes this positive development and requests the Government to actively pursue its policies seeking to prevent the recurrence of such phenomena in the future.*

*The situation of wage arrears.* Further to its previous comments, the Committee notes the Government's statement that it is undertaking various legislative measures concerning the ongoing problem of accumulated wage arrears. In this connection, the Government refers to the adoption of the new Labour Code (Act No. 154-XV of 28 March 2003) providing for the employer's obligation to pay wages as priority to other payments (section 144) and the liability of banks and public authorities in case of delayed payment of wages (section 146). It also refers to Decree No. 678 of 11 July 2005 setting out an action plan and measures aimed at the elimination of wage arrears and to Decision No. 1240 of 30 November 2005 restricting the possibility for salary increase, bonuses and other incentive payments to managers of state enterprises experiencing wage arrears until all wage debts are completely eliminated. *The Committee would appreciate receiving copies of the abovementioned instruments.* The Committee also notes that the National Commission for Consultations and Collective Bargaining discussed on several occasions the question of wage arrears and recommended measures. *It requests the Government to provide additional information on those discussions and recommendations.*

Further, the Committee notes the statistical data provided by the Government showing that in 2006 more than 800 inspection visits were carried out, and 100 cases of administrative contraventions were identified including wage-related offences. The Government indicates that as the result of these efforts, the total accumulated amount of wage arrears has considerably diminished. As of 1 January 2007, the wage debt stood at 114.7 million lei (approximately US\$10 million), as compared to 638.6 million lei (approximately US\$56 million) on 1 January 1999. *The Committee would appreciate if the Government would continue to supply up to date and documented information on the evolution of the situation of wage arrears.*

A request on certain other points is being addressed directly to the Government.

## Morocco

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94)*** ***(ratification: 1956)***

The Committee notes that Decree No. 2-98-482 of 30 December 1998 laying down conditions and procedures for the awarding of state contracts does not contain any provisions relating to labour clauses. It notes with regret that Decree No. 2-99-1087 of 4 May 2000 approving the general administrative conditions applicable to contracts for work executed for the State's account does not ensure the application of the Convention either, inasmuch as section 22(1) restricts itself to stating that the full responsibility for applying all labour legislation and regulations to the contractors' staff belongs to the contractor himself. Moreover, the Committee notes that section 20(4) of the same Decree merely states that the wage paid to workers must not be less than the legal minimum wage for each category of workers. With regard to other types of public contracts, the Committee notes that Decree No. 2-01-2332 of 4 June 2002 approving the general administrative conditions applicable to contracts providing research and management services for the State's account does not ensure the application of the Convention either. It notes that section 19 of the Decree limits itself to stating that the contractor is subject to the obligations resulting from the laws and regulations in force concerning the protection of the workforce and conditions of work.

The Committee is bound to reiterate that, pursuant to *Article 2 of the Convention*, the public contracts to which the Convention applies must include clauses ensuring to the workers concerned wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations. In addition, the terms of the clauses to be included in contracts must be determined in consultation with the employers' and workers' organizations concerned. Hence the application of the Convention is not ensured by a provision that merely requires social legislation to be applied to workers engaged in the performance of public contracts. The inclusion of labour clauses in these contracts aims to provide protection for workers in cases where the legislation only establishes minimum conditions of work which are likely to be improved by general or sectoral collective agreements. The fundamental objective of the Convention is therefore to combat the risk of "social dumping" affecting highly competitive public contracts.

*The Committee therefore asks the Government to adopt suitable measures as quickly as possible to ensure the full application of the Convention by prescribing the inclusion of labour clauses provided for by the Convention in all public contracts to which it is applicable.*

Finally, the Committee draws the Government's attention to the General Survey which it has undertaken this year on labour clauses in public contracts, which presents the law and practice of the member States in this area and also an evaluation of the impact and current relevance of Convention No. 94.

[The Government is asked to reply in detail to the present comments in 2008.]

## Myanmar

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1954)

The Committee notes the information provided in the Government's report indicating that the Minimum Wage Act of 1949, which provides for the establishment of minimum wage councils, is still in force. It also notes that such councils continue to exist solely for the rice-milling and the cigar- and cheroot-rolling industries. In this regard, the Committee notes the data sent by the Government concerning the number of enterprises and workers covered by such councils. The Committee is nevertheless forced to note that the Government's report does not respond to the points raised in its previous comments concerning the following matters: (i) the extension of the minimum wage fixing machinery to other industries such as the printing, oil-milling and garment industries, which, according to the Government, has been under consideration for a number of years; (ii) the raising of the minimum wage rates applied in the rice-milling and the cigar- and cheroot-rolling industries, which, according to the Government's recent reports, are no longer in line with market wages; (iii) the providing of up to date information on the application of the Convention in practice and, in particular, on the minimum wage rates currently in force in various industries; (iv) the providing of comparative statistics on the evolution of economic indicators, such as the inflation rate in recent years and minimum wage levels over the same period, and extracts from official reports and relevant studies; (v) the communication of data on inspection visits carried out, any reported violations of minimum wage legislation, and the measures taken to remedy the situation.

*The Committee asks the Government to provide comprehensive information on these various matters in its next report. It once again urges the Government to take the necessary measures to ensure that the scope and level of minimum wage rates are such as to permit those rates to fulfil their role as tools of social protection and poverty reduction.*

[The Government is asked to report in detail to the present comments in 2008.]

## Netherlands

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1952)

The Committee notes the adoption of the Order of 16 July 2005 laying down rules concerning procedures for the award of public works, supply and service contracts. It notes that section 26 of the Order reproduces the substance of Article 26 of EU Directive No. 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Under this provision, contracting authorities may lay down special conditions relating to the performance of a public contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. These conditions may relate to social and environmental considerations. The Committee also notes that the Government refers in its report to paragraph 34 of the Preamble of the abovementioned Directive, which states that "the laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of employment conditions and safety at work apply during performance of a public contract, providing that such rules, and their application, comply with Community law". The Committee notes the Government's indications that it is authorized under Community law to impose certain stipulations regarding the conditions of employment of workers in the context of the performance of public contracts, the contractor being obliged, moreover, to comply with the provisions of national law and of the relevant collective agreements.

The Committee draws the Government's attention to the fact that section 26 of the Order of 16 July 2005 is purely permissive, inasmuch as it authorizes the contracting authority to require the contractor to observe certain conditions, particularly in the social field. Such a provision does not ensure the observance of *Article 2 of the Convention*, under which public contracts to which the Convention applies must include clauses ensuring to the workers concerned wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations.

With regard to paragraph 34 of the Preamble to Directive No. 2004/18/EC, the Committee recalls that the mere fact that the social legislation and the relevant collective agreements are applicable to workers engaged for the performance of public contracts in no way releases the Government from the obligation to provide for the inclusion of labour clauses in public contracts as required by the Convention. Even if workers employed for the execution of public contracts are covered by collective agreements, the whole point of implementation of the Convention is to ensure the specific protection that these workers need. Hence the Convention requires in particular the adoption by the competent national authority of measures such as the publication of a notice relating to the specifications to ensure that tenderers are aware of the terms of the labour clauses (*Article 2, paragraph 4*, of the Convention). Notices must be posted in conspicuous locations at workplaces in order to inform the workers of their conditions of work (*Article 4(a)*). In addition, the existence of penalties laid down by the Convention, such as the withholding of contracts or the withholding of payments due to the tenderer (*Article 5*), make it possible, in cases where labour clauses are violated, to impose penalties on the contractor which may be more directly effective than penalties applicable to breaches of general labour legislation.

*Consequently, the Committee asks the Government to take all necessary measures to ensure the inclusion of labour clauses in all public contracts as required by the Convention and to keep it informed of all developments in this respect. The Committee also asks the Government to supply copies of the general conditions which are currently applicable to the execution of public contracts.*

The Committee also draws the Government's attention to the General Survey which it has undertaken this year on labour clauses in public contracts, which presents the law and practice of the member States in this field and also an evaluation of the impact and current relevance of Convention No. 94.

[The Government is asked to reply in detail to the present comments in 2008.]

## Aruba

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**

The Committee has been drawing the Government's attention for several years to the need to adopt implementing legislation since the general applicability of the labour legislation to all public contracts is not sufficient in itself to give effect to the specific requirements of the Convention. In its reply, the Government indicates that at present some preliminary discussions have been undertaken between the Departments of Labour and Public Works with a view to harmonizing the national legislation with the Convention. *The Committee hopes that concrete progress will be made shortly and requests the Government to keep it informed of all future developments in this respect.*

*Further to its previous comments, the Committee once again requests the Government to make an effort and collect relevant and up to date information concerning the matters dealt with in the Convention including, for instance, the approximate number of public contracts awarded and the number of workers engaged in their execution, extracts from labour inspection reports showing the number and nature of infringements of the labour legislation observed in the area of public procurement, copies of any official studies concerning the social aspects of public contracting, etc.*

Finally, the Committee seizes this opportunity to refer to this year's General Survey, 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.

[The Government is asked to reply in detail to the present comments in 2008.]

## New Zealand

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1938)**

The Committee notes the Government's detailed report and the information provided in response to earlier comments made by the New Zealand Council of Trade Unions (NZCTU). It also notes the observations made by the Business New Zealand (BNZ) and the Government's reply to these observations.

#### *Minimum wages for training*

1. The Committee notes the Government's explanations concerning the introduction of a training minimum wage following the adoption of the Minimum Wage Amendment Act 2003 and the subsequent setting of the minimum training rate at 80 per cent of the adult minimum wage rate. The Government states that the minimum training wage strikes a balance between the payment of a socially acceptable minimum wage and the need to promote training opportunities and that the implementation of a system of "trainee scales", as suggested by the NZCTU, is not planned at this stage.

2. The Committee notes, in this connection, the NZCTU's observation that the current training rate is too low and is likely to act as a disincentive to workers over 20 years of age seeking to enter training. The NZCTU considers that it should be raised to 90 per cent of the adult minimum wage. *The Committee requests the Government to keep it informed of any further consultations on the level of the trainee wage rate.*

3. Moreover, the Committee notes the comments made by the BNZ referring to the absence of research into the effects of either the trainee rate or of the youth minimum wage on youth unemployment. In its reply, the Government indicates that there are various researches conducted on this subject, including one commissioned by the Department of Labour in 2006 entitled "Relativities between youth and adult minimum wage rates". *The Committee would appreciate receiving a copy of the research in question or of other related studies and surveys.*

4. As regards the youth minimum wage, the Committee notes that the NZCTU is in favour of the Minimum Wage (Abolition of Age Discrimination) Bill currently under consideration by the Government, which would abolish the youth minimum wage and would thereby allow the adult minimum wage to apply to all workers except those with specific exemptions such as the trainee rate. *The Committee asks the Government to keep it informed of all future developments concerning the adoption of the draft legislation.*

### *Minimum wages for disabled persons*

5. The Committee notes the Government's reference to the Minimum Wage Amendment Act 2007, which removed the blanket exemptions from the minimum wage for persons with disabilities and now allows for exemptions only on an individual basis. In this regard, the Committee notes the BNZ's concern that severely disabled persons may experience difficulty in finding appropriate employment now that blanket exemptions no longer apply. In its response, the Government states that an individualized exemption regime provides a fairer and more transparent system for persons whose disability genuinely impacts on their work performance while the system of blanket exemptions had to be repealed as inconsistent with domestic and international human rights law. The Committee also notes the position of the NZCTU, which welcomes the repeal of the Disabled Persons Employment Promotion Act and supports the right of disabled persons to receive at least the minimum wage for their work.

### *Enforcement of minimum wage legislation*

6. With reference to the point raised by the NZCTU concerning the lack of enforcement of minimum wage provisions for workers in isolated situations and where provision of accommodation is used to justify wage deductions, the Government indicates that the number of full-time labour inspectors will be increased to 30 while the staff in the Department of Labour's Workplace Contact Centre (responsible for proactively disseminating information on employment rights) has also been increased from 19 to 30. The Government further explains that the labour inspectorate together with the Workplace Contact Centre are part of a system designed to ensure compliance by providing information, to expedite the recovery of any underpayment and to reduce the need for sanctions. The Government also refers to other initiatives such as the Employment Relations Education Leave under which union members are entitled to paid leave to attend approved courses with a view to increasing their knowledge about employment relations.

### *The requirement for tripartite consultations on minimum wage issues*

7. The Committee notes the view expressed by the BNZ according to which consultations on minimum wage-related issues appear to be a formality for the Government rather than a genuine advice-seeking process as the BNZ's advice is almost invariably ignored. In its reply, the Government states that it values the views and input from the social partners, even though consultation does not always mean advice will be followed. The Committee recalls, in this respect, that as it has pointed out on numerous occasions, the term "consultation" has a different connotation both from mere "information", at one end of the scale, and from "co-determination", at the other end of the scale. While it is up to governments to guarantee that employers' and workers' organizations have a meaningful say in matters that are the subject of consultation and that their proposals are thoroughly studied and duly taken into consideration, this does not mean that prior consent, and even less so agreement, on the part of these organizations is needed before relevant decisions can be taken.

8. The Committee notes the statistical information provided by the Government, in accordance with Part V of the report form, concerning the size of the workforce (2,117,000 workers aged 15 and over as of December 2006), the evolution of minimum hourly wage rates from 2002 to 2007 (as from 1 April 2007, NZ\$11.25 for adults, NZ\$9 for youth between 16 and 17 years of age and for trainees), the number of workers covered by the minimum wage (as of 1 April 2007, 109,900 adults and 9,200 young workers), and the number of minimum wage inquiries, complaints, investigations and breaches observed in the period 2003–05. ***The Committee would be grateful if the Government would continue supplying up to date and documented information on the practical application of the Convention.***

9. 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 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 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.***

## **Panama**

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1971)***

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

The Committee notes that no progress has as yet been made with regard to the adoption of the draft Bill designed to give effect to the basic requirement of the Convention due to various circumstances such as the merging of the Ministries of Planning and Political Economy and the 1999 presidential elections. The Committee notes that, by letter dated 12 September 2000, the Ministry of Work and Labour Development (MITRADEL) transmitted the draft Bill to the Ministry of Finance for approval and

eventual submission to the Legislative Assembly. The Committee firmly hopes that this amendment will be adopted very shortly and requests the Government to keep it informed in its next report of any positive developments in this respect.

*In addition, the Committee asks the Government to provide in accordance with Article 6 of the Convention and Part V of the report form all available information on the practical application of the Convention, including, for instance, copies of public contracts, model specifications for public tenders or sample text of labour clauses currently in use, official reports or statistics bearing on the enforcement of relevant legislation (e.g. number and nature of infringements observed and penalties imposed) and any other particulars regarding the practical fulfilment of the conditions prescribed by the Convention.*

The Committee regrets to note that despite all assurances given in the last 25 years for the adoption of measures to give effect to the Convention, the new public procurement legislation (Law No. 22 of 2006) continues to fail to comply with the basic requirements of the Convention. *The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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.

## Philippines

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1953)**

The Committee has been requesting the Government for the last 25 years to take measures to ensure the full implementation of the basic requirement of the Convention, i.e. the insertion of labour clauses in public contracts, as set out in *Article 2 of the Convention*. The Committee recalls that, by Ministerial Order of February 1983, effect was given to the requirements of the Convention but the labour clauses which were subsequently included in public contracts only required contractors to comply with labour laws regarding minimum wages, hours of work and other conditions of labour. The Government later reported that, due to a shift in priorities of the legislature, no action could be taken to follow up on the Committee's comments while, in more recent reports, the Government limited itself to stating that workers involved in the execution of public contracts were sufficiently covered by the Labour Code and its implementing rules and regulations. In addition, the Government makes reference to the public procurement legislation in force, including the Government Procurement Reform Act (Republic Act No. 9184) of 2003 and its Implementing Rules and Regulations, which however contains no provisions on the social aspects of public contracting.

The Committee is bound to recall, in this respect, that the mere fact that the general labour legislation is applicable to workers engaged in the context of public contracts does not in any way exempt the Government from providing for the inclusion in public contracts of the labour clauses envisaged in the Convention. Such inclusion ensures the protection of workers in cases in which the legislation only establishes minimum conditions of work (e.g. minimum pay rates) which may be exceeded by general or sectoral collective agreements. Moreover, even if collective agreements were applicable to workers engaged in the execution of public contracts, the implementation of the Convention retains its full value in so far as its provisions are designed precisely to ensure the specific protection needed by those workers. For example, the Convention requires the adoption by the competent authorities of measures, such as the advertisement of specifications, to ensure that tenderers have advance knowledge of the terms of the labour clauses. It also requires notices to be posted in conspicuous places at the workplace to inform workers of the conditions of work applicable to them. Finally, it provides for sanctions in the event of non-compliance with the terms of labour clauses, such as the withholding of contracts or the withholding of payments due to contractors, which may be more directly effective than those available for violations of the general labour legislation. *The Committee therefore asks the Government to take without further delay all necessary measures in order to bring the national legislation into conformity with the Convention. It also requests the Government to specify whether the Ministerial Order of 16 February 1983 providing for the inclusion of labour clauses in government contracts, which previously gave effect to the provisions of the Convention, is still in force.*

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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 Government is asked to reply in detail to the present comments in 2008.]

## Poland

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1954)**

The Committee notes the information provided by the Government in reply to its previous comments. It also notes the adoption of the new law of 13 July 2006 on protection of employees' claims in the event of insolvency of their employer (Text 1121, Journal of Laws No. 158) and the recent amendment of section 29 of the Labour Code concerning the employer's obligation to inform employees about their wage conditions.

*The wage arrears situation.* With reference to the ongoing problems concerning the regular payment of wages, the Committee notes the Government's indication that inspection results confirm the consolidation of positive trends as

regards the observance of legislation on protection of labour remuneration. The Committee also notes the Government's reference to the new law of 7 April 2006 amending section 24 of the Public Procurement Act, so that employers who have been condemned by court decision for offences against the rights of gainfully employed persons are henceforth excluded from tendering for public contracts. The Government also refers to the law of 13 April 2007 on the national Labour Inspectorate which raises the fines for offences against workers' rights, including non-payment of wages, to a maximum of 30,000 zloty (approximately 8,300 euros) for fines imposed by a magistrate and to 2,000 zloty (approximately 550 euros) for fines imposed by a labour inspector.

In particular, the Government refers to the number of employers against whom wage orders have been issued by labour inspectors and which has dropped from 6,200 in 2003 to 3,600 in 2005. Consequently, the overall amount of wage orders has been reduced from 360 million zloty in 2003 (approximately 95 million euros) to almost 200 million zloty (approximately 53 million euros) in 2005 while the total number of workers experiencing delays in the payment of their wages has decreased from 359,000 in 2003 to 221,000 in 2005. In 2006, it was estimated that 75,366 persons were affected by the non-payment of 70 million zloty (approximately 19 million euros). Despite these favourable indications, the Committee notes with concern the high level of wage-related infringements reported by the labour inspection services, notably that in approximately 80 per cent of all controlled work establishments legislation on payment of remuneration was infringed and that 30.7 per cent of all controlled employers in 2006 were found in violation of regulations on labour remuneration including payment of overtime, holiday pay and similar entitlements. According to the Government's report, the main cause of revealed irregularities remain the absence of funds due to the bad financial situation of enterprises but there is also lack of knowledge of the legislation in force and application of incorrect methods of calculating remuneration and other benefits. *The Committee would be grateful if the Government would continue supplying up to date information on the measures taken to ensure that wages are paid regularly and in full, including labour inspection results, sanctions imposed, wage sums recovered, the economic sectors and categories of workers mostly affected by wage arrears, etc.*

*The wage crisis in the health sector.* The Committee notes the Government's explanations concerning the amendment of 9 June 2006 to the Act on public aid and restructuring of public health-care establishments of 15 April 2005 which gives the possibility for loans from the state budget to establishments other than independent public health-care units, offers possibilities for additional loans and increases the remittance of the main dues in respect of the loan from 50 to 70 per cent. While noting these legislative developments, however, the Committee observes that the Government does not provide any information on the process of restructuring in practice, especially as regards the settlement of the estimated wage debt of 358 million euros owed to the personnel of health-care institutions, including 170 million euros of accumulated liabilities in respect of non-compliance with article 4(a) of the "203 Act". The Committee recalls, in this respect, that the Government has previously indicated that it would communicate precise data on the number of health-care personnel affected by the problem of delayed payment of wages when health-care establishments would file applications for restructuring proceedings under the new law on public aid and restructuring. The Committee also recalls the Government's statement before the Conference Committee on the Application of Standards in June 2004 that the problem of outstanding wages in the health-care sector would be eliminated within two years. *The Committee accordingly requests the Government to provide detailed information on the present situation relating to the settlement of accumulated wage debts in the health-care sector, including: (i) the number of employees concerned; (ii) the total amount of wages settled and due including liabilities arising out of the "203 Act"; (iii) the time frame for the repayment of all outstanding sums; and (iv) full particulars on any individual agreements concluded with health-care personnel providing for repayment in instalments or containing a waiver on the payment of interest.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Romania

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1973)**

The Committee recalls its previous observation in which it examined issues related to the regular payment of salaries to teachers and the financing of the education system following comments made by the Democratic Trade Union Confederation of Romania (CSDR) and the Free Trade Union Federation in Education (FSLI). The Committee has been in receipt of new comments made by the same organizations denouncing the Government's continued failure to implement statutory provisions concerning the level of public expenditure for education and also a series of practices that allegedly violate various pay entitlements of teachers and related personnel. These comments were transmitted to the Government on 23 May 2007 and the Government's reply was received on 4 October 2007.

More specifically, as regards the financing of the education system, the CSDR and the FSLI indicate that, contrary to section 170(1) of Act No. 84/1995 on national education which provides that the budgetary resources allocated to education should reach 6 per cent of the GDP in 2007, the state budget for 2007 allocates only 5.2 per cent of the GDP to public education. Moreover, by Emergency Ordinance No. 88/2006 the Government has suspended the application of section 170(1) of Act No. 84/1995 until 31 December 2007. In addition, a draft legislative amendment, which was massively supported by a FSLI-initiated petition, for the allocation of at least 7 per cent of the GDP to public education,

primarily through VAT revenue, has been approved by Parliament but has remained in abeyance for the last two years at the Senate.

With respect to the actual wage policy, the CSDR and the FSLI enumerate several wage supplements and allowances that the Government refuses to pay to teachers and auxiliary staff, such as the allowance paid to the heirs of deceased teaching personnel provided for in section 106(2) of Act No. 128/1997, the 15 per cent supplement for library staff provided for in section 51(3) of Act No. 334/2002, and the allowances provided for in the single collective agreement for the education branch (e.g. the birth allowance, the 15 per cent wage supplement for those working in units located in socially and economically disadvantaged areas, and the wage benefit for leaving the profession at the age of retirement). The two organizations also allege that other entitlements, such as holiday pay or the cash compensation for work performed during periods of weekly rest, are often miscalculated or simply ignored. According to the two organizations, some of the teachers' claims have given rise to judicial proceedings and favourable court decisions have already been obtained. Moreover, the CSDR and the FSLI state that the Government has not as yet fulfilled its obligation under the agreement of 28 November 2005 to prepare draft legislation on the remuneration of public employees and therefore the question of wage differential between teachers and other categories of public employees remains unaddressed. It is further pointed out that the Government ignores the minimum wage rate established under section 40 of the national collective agreement for 2007–10 (440 lei, or approximately US\$186, per month for full-time employment of 170 hours) by fixing lower pay rates through Government Decision No. 1825/2006.

In its reply, the Government indicates, firstly, that the legislative amendment seeking to allocate 7 per cent of the GDP to public education was finally rejected by the Senate and the Government has no power to influence or otherwise intervene in decisions of the legislature. Secondly, as regards the payment of various wage supplements, the Government maintains that most of the claims are unfounded. For instance, teaching personnel are not civil servants, but contractual workers, and therefore they are not entitled to receive holiday pay. Similarly, library staff are considered auxiliary teaching personnel and, as such, enjoy a wage increase under Government Decision No. 281/1993 and Order No. 1350/2007, but they are not entitled to receive the 15 per cent supplement provided for under Act No. 334/2002. Thirdly, concerning the minimum wage, the Government states that the rate of 440 lei applies only to private sector employees and therefore employees of the budgetary sector are not directly concerned.

While noting the Government's explanations, the Committee expresses its concern about the persistence of the controversy over pay conditions of education personnel. ***It would appreciate receiving full particulars on any progress made in implementing the 2005 agreement and settling the accumulate wage debt within the agreed time framework. It also asks the Government to indicate the measures taken in execution of recent court decisions ordering the recalculation or retroactive payment of certain benefits and indemnities to teachers.***

## Russian Federation

### ***Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)***

The Committee takes note of the detailed information provided by the Government in reply to its previous comment.

#### ***The wage arrears situation***

1. The Committee notes that, according to the latest statistics provided by the Government, in September 2006, the overall wage debt was 4,785 million roubles (approximately US\$186 million), which represents a 52.2 per cent decrease (or a fall by 5,233 million roubles) compared to the corresponding figures of September 2005 and a 12 per cent decrease (or a fall by 650 million roubles) compared to July 2006. The Government indicates that due to enhanced supervision and control measures taken by executive and labour authorities at the federal and regional levels, wage arrears have been reduced almost fivefold from 23.4 billion roubles (approximately US\$910.5 million) in August 2004 to 4.8 billion roubles in August 2006. The Government adds that the problem of deferred payment of wages has practically been solved in the public sector with no wage arrears reported in 84 administrative divisions of the Russian Federation and insignificant delays of one to three days in the remaining regions. In September 2006, the total number of employees experiencing delays in the payment of their wages was 600,000 persons. While noting with interest that the total volume of wage arrears seems to have been drastically curtailed in recent years – and practically eliminated in the public sector – the Committee remains concerned about the level of the outstanding wage debt, the number of workers concerned and the persistent practices of systematic and deliberate delays in the payment of workers' wages on the part of certain employers and managers. ***The Committee asks the Government to keep the wage arrears situation under close and constant scrutiny, to pursue with determination its efforts for the elimination of such phenomena and the prevention of their recurrence and to report regularly on any progress made in these matters.***

#### ***Supervision and sanctions***

2. The Committee notes the Government's indication that a Bill amending section 145-1 of the Criminal Code was introduced to the Russian Parliament in March 2006 with a view to strengthening the criminal and administrative liability of those managers who deliberately allow systematic delays in the payment of workers' wages and also increasing the level of monetary fines. The Government specifies that the text of the Bill was drafted in consultation with the all-Russia employers' organizations and trade unions and was also approved by the Russian Tripartite Commission on Social and

Labour Affairs. *The Committee requests the Government to keep it informed of any developments in this regard and to transmit the text of the legislative amendment as soon as it is adopted.*

3. With reference to labour inspection, the Government reports that in the third quarter of 2006, visits were conducted in some 13,595 enterprises, including 2,762 state organizations. As a result of those visits, a total amount of 1.81 billion roubles (approximately US\$70.5 million) in wage arrears were recovered and paid to over 266,000 workers, while in 156 cases criminal proceedings were initiated against the managers. *The Committee requests the Government to continue supplying up to date statistics on labour inspection results and all other activities aiming at ensuring compliance with national laws and regulations on wage protection.*

#### *Protection of wage claims in the event of the employer's insolvency*

4. The Committee notes with interest the Government's indication that a Bill on the protection of the citizens' wage rights in the event of the insolvency (bankruptcy) of the employer has been drafted and is now the subject of tripartite consultations. According to the Government's report, the purpose of the draft legislation is to align the national legislation with the requirements of ILO Convention No. 173 and article 25 of the revised European Social Charter which provides that all workers have the right to protection of their claims in the event of the insolvency of their employer. Moreover, the Government refers to a plan of cooperation between the Government, all-Russia trade unions and all-Russia employers' organizations for the enforcement of the right of workers to prompt and full payment of their wages. Under this plan, a system of economic measures has been developed to guarantee the right of workers to wages in case of insolvency of enterprises, including the establishment of a compensation mechanism. *The Committee requests the Government to keep it informed of any developments concerning the finalization and adoption of the new legislation on the protection of wage claims in the event of the employer's insolvency.* It recalls, in this connection, that the technical assistance and expert advice of the Office are at the Government's disposal, especially as regards the drafting of legislation implementing the standards set out in Part III of Convention No. 173 dealing with the protection of workers' claims by a guarantee institution. *The Committee would also be grateful if the Government would provide full particulars, including copies of any relevant texts, concerning the plan of cooperation concluded with the social partners in relation to the prompt and full payment of wages.*

#### *The wage situation in the fishing industry in the Kamchatka region*

5. Further to its previous comment on this point, the Committee has been in receipt of a collection of documents concerning alleged violations of workers' rights, including accumulated wage arrears, in the fishing industry in the Kamchatka region. These documents contain a series of communications by which the Independent Union of Fishers of Kamchatka calls upon public authorities to investigate into various abusive practices affecting fishers, including but not limited to the non-payment of wages and the absence of effective remedies to ensure the recovery of unpaid wages, as well as the replies of several services, such as the Fisheries Department of the Kamchatka Regional Authority, the State Labour Inspectorate of the Kamchatka Region, and the Municipal Prosecution Service of the City of Petropavlovsk, all indicating that they lack authority to review the matter. *The Committee once again requests the Government to provide its comments in reply to the observations made by the Independent Union of Fishers of Kamchatka.*

## Rwanda

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1962)

The Committee notes the adoption of the Public Procurement Act No. 12/2007 of 27 March 2007. With regard to the conditions of work applicable to staff employed within the framework of the execution of public contracts, it notes that under section 96 of this Act, the contractor is required to apply the laws and regulations in force. The Committee also notes that, in the context of services contracts, section 170 of the Act provides that staff placed at the disposal of the contracting authority shall keep to the working hours which apply to the service to which they are attached and benefit from holidays in accordance with the legislation in force, unless the terms of reference provide otherwise. The Committee also notes that Act No. 51/2001 of 30 December 2001 issuing the Labour Code does not contain any provisions on the inclusion of labour clauses in public contracts.

The Committee notes with regret that, despite the recent adoption of new public procurement legislation, the Government is still not able to report on any real progress made in meeting the fundamental requirements of the Convention. In this respect, the Committee recalls once again that the fact that general legislation, including labour law, also applies to workers responsible for the execution of public contracts, as stipulated by section 96 of the Public Procurement Act of 2007, is not enough to ensure the fulfilment of the obligation placed on the Government by *Article 2 of the Convention* to require the inclusion, in all the public contracts to which the Convention applies, of labour clauses ensuring that the workers concerned benefit from wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the same area by collective agreement, by arbitration award or by national laws or regulations.

*Recalling that it has been commenting for 30 years on the failure to apply the Convention, the Committee trusts that the Government will take, without further delay, all the measures necessary to ensure the inclusion of the labour*

*clauses provided for by the Convention in all public contracts to which the Convention applies. The Committee also requests the Government to indicate whether a ministerial order determining the general conditions of contracts has been adopted pursuant to section 5, paragraph 2, of the Public Procurement Act of 2007 and, if so, to provide a copy.*

The Committee takes this opportunity to draw the Government's attention to the General Survey that it has carried out this year on labour clauses in public contracts, which reviews the legislation and practices of member States in this respect and makes an assessment on the impact and current relevance of Convention No. 94.

[The Government is asked to reply in detail to the present comments in 2008.]

## Singapore

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1965)**

The Committee notes the Government's reference to the Government Procurement Act (Chapter 120) of 1997, as amended in 2004, and the Building and Construction Industry Security of Payment Act of 2004 (Chapter 30B), as amended in 2006. It also notes the various Public Sector Standard Conditions of Contract (PSSCOC) and their supplements formulated by the Building and Construction Authority, such as the PSSCOC for construction works, design and build, and nominated subcontract. It further notes the Government's statement that all PSSCOC include a common provision specifying that public contracts are subject to national law and that, under this clause, the provisions of the Employment Act, Industrial Relations Act, Workmen Compensation Act and the Central Provident Fund Act, which prescribe statutory minimum benefits (including normal and overtime rate of wages and hours of work), apply to employees engaged in the execution of such public contracts. The Government also indicates that some public contracts include a specific labour clause providing, for example, that the contractor must pay his/her workers promptly and observe the workers' working hours and holidays in accordance with current laws and regulations.

The Committee is bound to recall, in this respect, that the mere fact that the labour legislation is applicable to workers engaged in the context of public contracts does not in any way exempt the Government from providing for the inclusion in public contracts of the labour clauses envisaged in the Convention. Such inclusion ensures the protection of workers in cases in which the legislation only establishes minimum conditions of work (e.g. minimum pay rates) which may be exceeded by general or sectoral collective agreements. Moreover, even if collective agreements were applicable to workers engaged in the context of the execution of public contracts, the implementation of the Convention retains its full value in so far as its provisions are designed precisely to ensure the specific protection needed by those workers. For example, the Convention requires the adoption by the competent authorities of measures, such as the advertisement of specifications, to ensure that tenderers have advance knowledge of the terms of the labour clauses. It also requires notices to be posted in conspicuous places at the workplace to inform workers of the conditions of work applicable to them. Finally, it provides for sanctions in the event of non-compliance with the terms of labour clauses, such as the withholding of contracts or the withholding of payments due to contractors, which may be more directly effective than those available for violations of the general labour legislation. *The Committee therefore requests the Government to take all necessary measures to ensure the insertion of labour clauses in public contracts as required under Article 2 of the Convention. It also requests the Government to specify whether the Executive Council 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 addition, the Committee asks the Government to transmit a copy of the Government Procurement Regulations and Government Procurement (Application) Order, and also to specify whether standard conditions of contract exist for the procurement of supplies and services. Furthermore, the Committee asks the Government to indicate how it is ensured in law and practice the application of Article 2, paragraph 3 (consultations for determining the terms of labour clauses); Article 2, paragraph 4 (advertising labour clauses through specifications); Article 4(a)(iii) (informing workers of their conditions of work through posting of notices); and Article 5 (withholding of contracts and withholding of payments), of the Convention.*

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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 Government is asked to reply in detail to the present comments in 2008.]

## Sri Lanka

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1983)**

The Committee notes the information provided by the Government in reply to the observations made by the Independent Workers' Union (IWU) concerning the alleged wage debt owed to workers of Harepark SP tea plantation. The Committee notes that according to the payment details provided by the Assistant Commissioner of Labour of the Kandy-North District, judicial proceedings have already permitted the recovery of certain amounts and steps will be taken to recover unpaid contributions to the Employer Provident Fund while further investigation would be needed with respect

to certain periods for which no records are available. The Committee notes, however, that whereas the Government refers to a single individual complaint received so far on non-payment of gratuity, IWU maintains that the situation concerns 500 employees and an estimated overall amount of Rs255 million (approximately 1.6 million euros). ***It therefore asks the Government to supply in its next report full and documented information on the situation and to keep it informed of any progress made for the settlement of outstanding payments.***

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

### ***Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1975)***

The Committee notes the information provided by the Government in its report and attached documents. It notes in particular the introduction of a national minimum monthly wage of Rs5,000 (approximately US\$46) following discussions at the National Labour Advisory Council (NLAC) and the subsequent adjustment of minimum wage rates for 29 different sectors by the respective wages boards. The Government indicates that the revision of minimum wages in another 14 sectors is under consideration while plantation workers are still covered by collective agreements. ***Recalling its previous comments in which the Committee had requested the Government to indicate any progress in developing the wage structure in the plantations sector and also noting the Government's reference to an ILO mission presently studying the wage determination mechanisms in the country, the Committee requests the Government to keep it informed of any developments concerning the minimum wage levels practised in plantations, relevant wage board decisions, and the findings and recommendations of the ILO mission in this respect.***

In addition, the Committee notes the observations made by the Employers' Federation of Ceylon concerning the application of the Convention. The Employers' Federation states that while the current system of wages boards provides a sound mechanism for minimum wage fixing in respect of different trades, the concept of a "national minimum wage" towards which the Government is now moving would need to be based on a broader definition of the term "wages" taking into account local practices such as the different types of productivity or incentive payments paid by various enterprises engaged in manufacturing industries. ***The Committee would appreciate receiving the Government's views on the points raised by the Employers' Federation of Ceylon.***

Moreover, the Committee notes the observations made by the Lanka Jathika Estate Workers' Union (LJEWU) concerning the application of the Convention. According to the Union, the Convention is applied in a generally satisfactory manner but further progress should be made in three respects: the coverage of the minimum wage system, the process of consultation with workers' organizations, and the level of the national minimum wage.

As regards the coverage of the minimum wage system, the LJEWU indicates that the remuneration tribunals, which are responsible under the Shop and Office Employees Act (Act No. 19 of 1954) for fixing minimum pay rates applicable to certain types of shops and offices, have not met for over three decades and therefore any minimum wage rates they may have set in the past are very much outdated. The LJEWU adds that at present the remuneration tribunals are more or less defunct. Moreover, collective agreements that generally provide for wage rates higher than the statutory or the market rates are very limited in number and they cover only a portion of the entire workforce.

With respect to the obligation for full consultation and direct participation of workers' representatives in the determination of the minimum wage, the LJEWU states that although consultations are conducted at times they cannot be termed as full and points out that there has been no consultation about the coverage of private sector workers.

Finally, concerning the national minimum monthly wage of Rs5,000 introduced in May 2007, the LJEWU considers it unsatisfactory given that the cost of living is very high and constantly rising, and also the fact that the wages are not linked to, or otherwise made to reflect the cost of living indicators.

***The Committee would appreciate receiving the Government's reply to the specific points raised by the LJEWU. In addition, the Committee notes that the Government has not replied to all the points raised in its previous observation (for instance, minimum wage protection for domestic workers and fishers, and minimum wage situation in the tobacco, cigar manufacturing, docks and ports, graphite and cinnamon sectors) and hopes that a consolidated response will be transmitted shortly.***

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

## **Sudan**

### ***Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1957)***

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

*Article 3, paragraph 2(2), of the Convention.* The Committee recalls that for many years it has been drawing the Government's attention to section 4 of the Wages and Conditions of Employment Committees Act of 1976, which should be amended to ensure the participation, in equal numbers and on an equal footing, of the employers and workers concerned in the operation of the minimum wage fixing machinery. In this respect, the Government's reports have been announcing for over 20 years the establishment of a tripartite commission to bring the national legislation into conformity with the Convention. The Committee notes with regret that, despite the commitments that it has made in this respect on many occasions, the Government

has still not been able to make the amendments necessary to bring the national legislation into conformity with the Convention. *Recalling both the spirit and the letter of the Convention and paragraph 425 of its General Survey of 1992 on minimum wages, in which it strongly urges governments to take the necessary action to ensure that the participation of the social partners in the operation of minimum wage machinery is useful and effective and on an equal footing, the Committee requests the Government to take all the necessary measures without further ado to bring the national legislation fully into conformity with the Convention. It expresses the firm hope that the Government will be in a position to indicate in its next report the progress achieved with a view to ensuring the effective participation of employers' and workers' organizations, in equal numbers and on an equal footing, in the national minimum wage fixing machinery.*

*Article 5 of the Convention and Part V of the report form. While noting the information provided by the Government in its last reports, and particularly the decision of 2000 adjusting minimum wages on the basis on the Minimum Wage Act of 1974, the Committee would be grateful if the Government would specify in its next report all the minimum wage rates applicable both under the Minimum Wage Act and the Act on Wages and Conditions of Employment Committees of 1976. It would also be grateful to be provided with any other relevant information enabling it to assess the manner in which the Convention is applied in practice, including extracts from the reports of the inspection services concerning compliance with minimum wages and, where appropriate, the measures taken when violations have been found and the number of workers actually covered by the minimum wage regulations.*

*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: 1970)**

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 earlier indication that following the conclusion of the Naivasha Comprehensive Peace Agreement and the promulgation of a transitional constitution in 2005, a tripartite committee has undertaken the revision of the labour legislation and the preparation of a consolidated Labour Code. The Committee also notes the Government's statement that in formulating the draft new Labour Code, due account was taken of all the points raised in previous comments and therefore the new legislation is expected to give full effect to the requirements of *Articles 3* (payment in legal tender), *6* (freedom of workers to dispose of their wages), *13, paragraph 2* (place of wage payment), and *14* (notification of wage conditions and statement of earnings). *The Committee would be interested in receiving an advance copy of the draft text, and recalls that the Government may avail itself, if it so wishes, of the advisory services of the Office in finalizing the new Labour Code.*

Moreover, the Committee draws once more the Government's attention to the 2003 General Survey on the protection of wages, which reviews relevant State practice in length and gives guidance on possible ways in which legislative conformity with the Convention may be achieved. *The Committee hopes that in its next report the Government will be in a position to provide full particulars on all the matters on which the Committee has been commenting for some time past.*

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

## **Suriname**

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1976)**

The Committee recalls that for the last 35 years it has been requesting that the General Regulations for the execution and maintenance of works, to which reference was first made in 1968 and which contained labour clauses in line with the Convention, be extended to public contracts other than those for public works. However, the Committee never received any indication of concrete progress made in this respect. On the contrary, the Committee notes that in recent reports the Government refers to the Labour Act No. 163 of 1963 as being the only legislation applicable to employment and labour matters arising in the context of public contracts.

In this connection, the Committee is obliged to point out that the fact that the general labour legislation is applicable to workers engaged in the execution of public contracts does not in any way absolve the Government from its obligation to provide for the insertion of labour clauses in public contracts falling within the scope of the Convention. Such clauses seek to ensure more favourable employment and working conditions to workers in case the labour legislation only establishes minimum standards that may be improved through collective negotiation. Moreover, even if collective agreements were applicable to workers engaged in the execution of public contracts, the implementation of the Convention would still remain relevant in so far as it affords additional protection to the workers concerned. For example, the Convention requires the adoption by the competent authorities of measures, such as the advertisement of specifications, to ensure that tenderers have advance knowledge of the terms of the labour clauses. It also requires notices to be posted in conspicuous places at the workplace to inform workers of the conditions of work applicable to them. Finally, it provides for sanctions in the event of non-compliance with the terms of labour clauses, such as the withholding of contracts or the withholding of payments due to contractors, which may be more directly effective than those prescribed by the general labour legislation. *The Committee therefore requests the Government to take the necessary measures to ensure compliance with the requirements of the Convention both in law and practice.*

*In addition, the Committee would be grateful if the Government would supply up to date information on the practical application of the Convention including, for instance, copies of public contracts and standard tender*

*documents, statistics on the approximate number of public contracts awarded and the number of workers involved in their execution as well as any other particulars bearing on the operation of the country's public procurement system.*

The Committee understands that the Public Sector Management Strengthening Programme is under way with the support and financing of the Inter-American Development Bank, and that new procurement regulatory framework and procedures are expected to be drafted shortly. ***It requests the Government to keep it informed of all future developments regarding the reform of public procurement legislation and hopes that the Government will not fail to take due account of the Committee's comments, eventually drawing upon the expert advice and technical assistance of the International Labour Office.***

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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 Government is asked to reply in detail to the present comments in 2008.]

## Syrian Arab Republic

### ***Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1972)***

The Committee notes the Government's report and the information it contains. It notes in particular Order No. 1063 of 21 May 2006 establishing a general minimum wage of 4,805 Syrian pounds (approximately 70 euros) for all private sector workers in all the governorates. The Committee also notes Order No. 1759 of 27 September 2006 and Order No. 2333 of 26 December 2006 establishing the minimum wages of the various categories of employees in the restaurant and hotel sectors, respectively.

The Committee also notes with interest Act No. 24 of 10 December 2000 amending, inter alia, section 159 of the Labour Code on the setting of minimum wages, which now applies to domestic workers, who remain excluded from the general scope of application of the Code by virtue of section 5. ***It requests the Government to indicate whether a committee has been set up pursuant to section 156 of the Labour Code in order to establish a minimum wage for domestic workers, or whether Order No. 1063 of 21 May 2006 applies to these workers.***

The Committee also notes that, since the adoption of Act No. 234 of 2001, the hiring of foreign domestic workers is authorized. It notes that, according to the Government's report, section 16 of Order No. 81 of 21 November 2006 lists the specifications that must appear in the employment contract of these workers and the employers' obligations, including the requirement to pay domestic workers their monthly wages at the end of each month. The Committee notes a study carried out by the International Organization for Migration (IOM) on foreign domestic workers in the Syrian Arab Republic, published in August 2003, which estimates that there are between 10,000 and 15,000 such workers and that they come essentially from Indonesia, the Philippines and Ethiopia. It also notes that the General Federation of Trade Unions of the Syrian Arab Republic estimates that there are approximately 60,000 such workers. Although in its report the Government states that breaches of the provisions on minimum wages are very rare, the Committee notes that, according to the abovementioned IOM study, work contracts signed by foreign domestic workers in their countries of origin are often changed or cancelled on entry to the Syrian Arab Republic, and the workers have to sign new contracts with less favourable working conditions, including lower wages. ***The Committee requests the Government to respond to this allegation and to provide information on the measures taken to ensure that the legislation on minimum wages is observed in practice in respect of this particularly vulnerable category of workers.***

The Committee notes in this connection that, in its report, the Government refers to section 228 of the Labour Code which penalizes infringement of any provisions promulgated by Order which apply section 159 (fixing of minimum wages) with a fine ranging from 50 to 500 Syrian pounds (approximately 0.75 to 7.5 euros), the fine being multiplied in accordance with the number of workers affected by the infringement. Furthermore, the court may require the offender to pay the difference in wages due. ***The Committee requests the Government to indicate whether it plans to increase the amounts of the fines set in section 228 of the Labour Code which were established nearly 50 years ago.***

The Committee further notes that this section of the Labour Code allows, but does not require, the court to order the employer to pay the worker concerned the difference between the minimum wage and the wage actually paid. The Committee draws the Government's attention in this connection to its General Survey of 1992 on minimum wages in which it pointed out (paragraph 382) that "the guarantee of payment of minimum wages to workers requires the establishment not only of sanctions or supervisory machinery but also of procedural mechanisms enabling the worker to recover sums due in respect of the minimum wage". The Minimum Wage Fixing Recommendation, 1970 (No. 135), in its paragraph 14(d), emphasizes that workers should be given appropriate means to exercise effectively their rights under minimum wage provisions, including the right to recover amounts by which they may have been underpaid. This right is also established in Article 10, paragraph 4, of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), which the Syrian Arab Republic has also ratified. ***The Committee hopes that the Government will take steps without delay to have section 228 of the Labour Code amended in order to establish the right of workers to recover amounts due to them in the event of breach of the minimum wage provisions.***

The Committee also notes the data communicated in the Government's report under Convention No. 95, regarding breaches of the Labour Code reported in 2003 by the labour inspection services. It notes in this connection that the only offences recorded concern the application of section 43 of the Labour Code on the establishment of written contracts and that section 159 of the Code is not even mentioned in the inspection checklist. *The Committee requests the Government to provide detailed information on the application of the Convention in practice, particularly on the number of inspections carried out per year, the manner in which compliance with the minimum wage provisions is supervised, and the penalties imposed in the event of breach of these rules.*

## Uganda

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1963)

The Committee notes that the Government's report has not been received. It also notes the adoption of the Employment Act, 2006, which it will examine at its next session. *The Committee trusts that the Government will supply detailed information in its next report on the application of all the provisions of the Convention. 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 Government is asked to report in detail in 2008.]

## Ukraine

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)**

The Committee notes the Government's report which replies only partially to the previous observation concerning the ongoing situation of accumulated wage arrears in the country. Contrary to past years, the Government, in its last report, has not provided any statistical data on the evolution of the wage debt by industry or sector, nor has it given an up to date account of labour inspection activities and the results obtained in terms of wage money recovered or sanctions imposed. *Recalling that the Government has recently indicated a significant increase both in the overall amount of wage arrears accumulated by economically active enterprises as well as in the number of employees experiencing delays in the payment of their wages, the Committee asks the Government to supply detailed information regarding the evolution of the wage debt by industry or sector and geographical region, the number of workers affected, and the average delay in the payment of wages. It also asks the Government to report on any new measures or initiatives aiming at resolving the persistent wage crisis in the country.*

With respect to the difficulties experienced in the coal industry, the Committee has been in receipt of a considerable number of communications concerning the Nikanor-Nova mine by which the Confederation of Free Trade Unions of the Lugansk Region (KSPLO) and the Independent Miners' Union of Ukraine (NPG) call upon public authorities to put an end to the delayed payment of wages and to the payment of wages below the statutory minimum rate. *Recalling the Government's indication that the dispute has been referred to arbitration, the Committee requests the Government to provide full particulars on the outcome of the arbitration process and the current pay conditions in the Nikanor-Nova mine.* The Committee understands that the situation in the Nikanor-Nova mine is not an isolated phenomenon but rather characteristic of the present-day realities facing the coalmining industry in the country, i.e. high unemployment, low profitability and a poor safety record. The Committee also understands that the declining working conditions in state-run mines have led a significant number of workers to seek employment in one of the several hundred illegal mines operating in the country. *The Committee requests the Government to communicate more detailed information on the employment and working conditions prevailing in the mining sector and the measures taken or envisaged to ensure the regular payment of wages at public-owned mines.*

*Finally, the Committee wishes to draw attention to certain points left unanswered in the Government's report and asks the Government to address the following matters in its next report: (i) whether the practice whereby enterprises were allowed to settle wage debts by "selling" part of their own production to their employees at an agreed price and treating those sales as salary received, is no longer tolerated in law and practice, and if so, by virtue of which legal provision; (ii) whether the new draft legislation aiming at reinforcing the criminal and administrative sanctions in the event of delayed payment of wages has been adopted, and if so, whether a copy has been transmitted to the International Labour Office; and (iii) whether any concrete proposals have been formulated, in consultation with the social partners, regarding targeted activities on wage protection and the recently ratified Convention No. 173, and if so, whether such proposals have been submitted for consideration to the competent technical services of the Office.*

[The Government is asked to reply in detail to the present comments in 2008.]

## United Kingdom

### Bermuda

#### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**

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

In its previous comments, the Committee had drawn the Government's attention to the need to ensure the insertion of appropriate labour clauses in public contracts in conformity with the requirements of the Convention in view of the fact that it was never made clear whether the revised administrative instructions of 29 December 1962, by which effect was given to the Convention, were still in force. In its last report, the Government states that it is in the process of drafting legislation to address employment standards and that following consultations with the social partners a bill will be prepared for submission to the legislature.

*The Committee firmly hopes that the Government will make every effort to enact implementing legislation in the very near future. It also requests the Government to indicate in its next report any progress achieved in this regard.*

*In addition, the Committee asks the Government to supply, in accordance with Part V of the report form, all available information on the manner in which the Convention is applied in practice and to provide a sample of the public contracts now in use.*

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

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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.

### British Virgin Islands

#### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**

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

The Committee regrets to observe 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 currently under review and should be resubmitted to the Legislative Council shortly, the Committee recalls that the Government has been stating for the last 27 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 it informed of any developments in this respect.*

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

Finally, the Committee seizes this opportunity to refer to this year's General Survey 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.

## Uruguay

#### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1954)**

*Article 2, paragraph 1, of the Convention. Inclusion of labour clauses in public contracts.* The Committee notes with interest the adoption of Decree No. 475/005 of 14 November 2005, which refers explicitly in its preamble to the provisions of the Convention. It notes that section 1 of the Decree provides that, in the context of public contracts relating to the performance or supply of services (cleaning, surveillance, maintenance, etc.), the general and particular conditions of the contract must include clauses guaranteeing to workers of provider enterprises wages, working hours and other conditions of work which are in conformity with those laid down by the legislation, arbitration awards and/or collective agreements in force for the sector of activity concerned. The Committee understands that this provision obliges the enterprises concerned to provide wages, working hours and other conditions of work at least as favourable as the most favourable established by collective agreement, arbitration award or national laws or regulations. *It requests the Government to further clarify this point. The Government is also requested to clarify whether similar provisions have been adopted for construction and supply contracts and, if so, to send copies of any relevant text.*

The Committee also notes the adoption of Act No. 18.098 of 12 January 2007, section 1 of which provides that whenever a public authority concludes a contract with a third party for the performance of services for which it is responsible, the general and particular conditions of the contract must provide that the remuneration of workers to whom the performance of these tasks is assigned must be in conformity with awards made by the wage councils. However, the Committee notes with regret that this Act seems to restrict the scope of Decree No. 475/005 referred to above. It deals only with the issue of the remuneration of workers and not working hours or other conditions of work, as prescribed by the Convention. Moreover, Act No. 18.098 requires only the observance of wage rates fixed by the wage councils and not of those possibly more favourable conditions established by legislation, collective agreement or arbitration award. The Committee understands that the coexistence of Decree No. 475/005 and Act No. 18.098 poses the same problems of application of the Convention as those which were raised in its previous comments regarding the relationship between section 34 of Decree No. 8/990 and section 1 of Decree No. 114/982 (see in particular the observation made in 2000 by the Committee on this point), in as much as section 1 of Act No. 18.098 does not reproduce the text of section 1 of Decree No. 475/005, whereas the latter conforms fully to the provisions of *Article 2 of the Convention* with regard to public service contracts. ***The Committee asks the Government to clarify this issue and to take all necessary measures to ensure that all public contracts covered by the Convention incorporate clauses guaranteeing to the workers concerned wages, hours of work and other conditions of work which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations.***

The Committee also notes the adoption of Act No. 18.099 of 24 January 2007, under the terms of which enterprises which use subcontractors or intermediaries are jointly responsible for the obligations of the latter in social matters, this responsibility also extending to public authorities resorting to such practices.

The Committee also notes the comments made by the Inter-Trade Union Assembly–National Workers' Convention (PIT–CNT), according to which the adoption of the new texts referred to above signifies progress in the protection of workers' wage claims. However, it notes that, according to the PIT–CNT, workers' claims against the State, such as those made by workers of subcontracting enterprises (“empresas tercerizadas”) in cases of non-payment of wages owed to them, must now be submitted to the civil courts, thereby unduly depriving them of the protection inherent in the application of labour law. ***The Committee understands that the question of competent jurisdiction for dealing with wage disputes does not affect the due application of the Convention. It asks the Government to send its observations on this matter.***

*Article 2, paragraph 3. Consultation of employers' and workers' organizations. The Committee notes that the Government has not replied to its previous comment on this point and asks it to supply information on the manner in which prior consultation of employers' and workers' organizations is ensured with regard to the content of labour clauses, particularly tripartite consultations which were conducted before the adoption of Act No. 18.098 of 12 January 2007 and Decree No. 475/005 of 14 November 2005.*

*Article 4(a)(iii). Information given to workers.* The Committee notes that Decree No. 392/980 was repealed by Decree No. 108/2007 of 22 March 2007. It notes that, under section 2 of the new Decree, enterprises must keep work registers (“planillas de control del trabajo”). These registers must mention in particular the wages and hours of work of the worker concerned (section 9) and must be kept within the enterprise in a place where they can be consulted by the workers (section 11).

*Article 5. Penalties.* The Committee notes that, under section 3 of Decree No. 475/005 and section 4 of Act No. 18.098, public contracts to which these texts apply must include a clause providing for the possibility of the contracting authority to withhold payments due under the contract, corresponding to the amount of wages claimed by workers of the contracting enterprise.

*Article 6 and Part V of the report form.* The Committee notes with interest the copy of the invitation to tender attached to the Government's report, which provides in particular for the labour inspectorate to be notified if the contractor does not observe the standards, arbitration awards or collective agreements in force (section VI, paragraph 2(e)). The Committee notes that section III, paragraph 1, of this document states that the general conditions for public works are applicable to the contract. ***It asks the Government to indicate whether the text to which reference is made is Decree No. 8/990 of 24 January 1999 approving the official text of the “General conditions for the construction of public works”, which was the subject of previous comments made by the Committee. If not, the Government is requested to send a copy of the general conditions which are currently applicable.***

Further, the Committee draws the Government's attention to the fact that full observance of the Convention requires the inclusion of labour clauses in the contract concluded between the public authority and the enterprise to which the public contract is assigned, and not only in the invitation to tender. ***Consequently, the Committee asks the Government to send copies of public contracts containing the labour clauses provided for by the Convention.***

In this respect, the Committee draws the Government's attention to this year's General Survey on labour clauses in public contracts, which presents the law and practice of member States in this area and makes an assessment of the impact and current relevance of Convention No. 94.

[The Government is asked to reply in detail to the present comments in 2008.]

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1954)**

Further to its previous comments concerning observations made by the Latin American Central of Workers, the Committee notes that the Government has no knowledge of any court decisions on the complaint lodged by bank employees on grounds of failure to pay overtime and amounts improperly deducted from their wages. It further notes that, in a letter of July 2000 to the Minister of Labour, the Association of Bank Employees of Uruguay (AEBU), affiliated to the Inter-Trade Union Assembly–National Convention of Workers (PIT–CNT), stated that, no further attempts to breach the provisions of the Convention having been reported, it did not deem it appropriate to refer the matter to the Minister. *The Committee requests the Government to indicate whether a court decision is still awaited in this case and, if so, to provide the text of it as soon as it is handed down.*

## **Bolivarian Republic of Venezuela**

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1944)**

The Committee notes the information supplied by the Government in reply to its last comment. Specifically, the Committee notes with interest the adoption of Decree No. 4.446 of 28 April 2006, section 1 of which establishes the minimum wage applicable to all workers, whether urban or rural, including domestic workers, irrespective of the number of workers in the enterprise. It notes that the amount of the monthly minimum wage was 465,700 bolivars (US\$217) from 1 May 2006 and 512,325 bolivars (US\$239) from 1 September 2006. It also notes Decree No. 5.318 of 25 April 2007, which increased the amount of the minimum wage to 614,790 bolivars (US\$286) from 1 May 2007, representing an increase of 20 per cent.

The Committee also notes the adoption of Decree No. 4.447 of 25 April 2006 issuing regulations to implement the Organic Labour Act. It notes with interest that this Decree no longer authorizes – in contrast to section 32 of the previously applicable regulations – the conclusion of apprenticeship contracts with a lower minimum wage for workers between 18 and 25 years of age. Moreover, it notes that the abovementioned Decrees Nos 4.446 and 5.318 provide for a lower minimum wage for apprentices under the age of majority, unless they perform their work in conditions identical to those of adult workers.

Moreover, the Committee notes the comments made by the International Organisation of Employers (IOE) on the application of the Convention, which were received on 27 September 2007 and forwarded to the Government on 15 October 2007. In particular, it notes the comments of the IOE concerning the lack of social dialogue in the country and the Government's refusal, for more than eight years, to convene the national tripartite committee mandated, in accordance with section 167 of the Organic Labour Act, to make recommendations on the revision of the minimum wage. In this respect, it also notes section 61 of the abovementioned Decree No. 4.447, which authorizes minimum wage fixing machinery other than that provided for by section 167 of the Organic Labour Act. The Committee recalls that *Article 3 of the Convention* requires, as a fundamental principle of any system for the fixing of minimum wages, the full and effective consultation of employers' and workers' organizations, and their participation on an equal footing in the aforementioned minimum wage fixing machinery. Moreover, the Committee notes that the 2007 Enabling Act allows the President of the Republic to adopt, as from 1 February 2007 for a period of 18 months, decrees having the same validity as acts in a large number of spheres, including economic and social affairs. *The Committee trusts that the Government will discharge its obligations under the Convention with regard to the participation of employers' and workers' organizations on an equal footing in the minimum wage fixing machinery. It requests the Government to forward its comments in reply to the comments made by the IOE on the application of the Convention.*

*While noting with interest the information supplied by the Government regarding the evolution of the minimum wage in absolute terms and in relation to the cost of the basic food basket, the Committee requests the Government to continue supplying information on the application of the Convention in practice, particularly information concerning changes in the minimum wage in relation to the rate of inflation.*

[The Government is asked to reply in detail to the present comments in 2008.]

## **Yemen**

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1969)**

The Committee notes that neither Act No. 3 of 1997, concerning bidding, outbidding and government warehouses, nor the draft amendment to this Act, both of which are attached to the Government's report, contains provisions for the inclusion of labour clauses in public contracts. It notes that the Government, in its report submitted in 1970 on the application of the Convention, stated that all public contracts included a clause under the terms of which all workers employed for the execution of such contracts enjoyed wages and conditions of work which were not less favourable than those applicable to state employees. *The Committee asks the Government to indicate whether this statement is still valid and, if so, to give details of the measures taken to ensure that all public contracts actually contain labour clauses.*

As regards the content of any such labour clauses, the Committee draws the Government's attention to the fact that *Article 2 of the Convention* prescribes the inclusion in public contracts of clauses the content of which must be the subject of tripartite consultations and ensure to the workers concerned wages, hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations. The reference to state employees' remuneration and other conditions of work does not therefore suffice to ensure the application of the Convention. **Consequently, the Committee trusts that the Government will soon adopt all the necessary measures to ensure the inclusion in public contracts of labour clauses which comply with the requirements of the Convention. The Government is asked to keep the Committee informed of all developments in this respect.**

In addition, the Committee notes that the Government is not currently in a position to supply copies of public contracts. **It asks the Government to send copies of such documents as soon as it is in a position to do so.**

Finally, the Committee draws the Government's attention to the General Survey which it undertook this year on labour clauses in public contracts, which presents the law and practice of the member States in this area, and makes an assessment of the impact and current relevance of Convention No. 94.

[The Government is asked to reply in detail to the present comments in 2008.]

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 26** (Albania, Bahamas, Barbados, Belarus, Belize, Bulgaria, Canada, Colombia, Congo, Germany, Grenada, Guinea-Bissau, Hungary, Italy, Malawi, Mauritius, Morocco, Nigeria, Papua New Guinea, Paraguay, Saint Lucia, Senegal, Seychelles, Sierra Leone, Slovakia, Solomon Islands, South Africa, Togo, United Kingdom: Anguilla, British Virgin Islands, Montserrat, Zimbabwe); **Convention No. 94** (Antigua and Barbuda, Austria, Belize, Cuba, Dominica, Grenada, Iraq, Italy, Jamaica, Malaysia: Sabah, Nigeria, Norway, Saint Lucia, Sierra Leone, Solomon Islands, Spain, Swaziland, Syrian Arab Republic, United Republic of Tanzania, Uganda, United Kingdom: Anguilla); **Convention No. 95** (Afghanistan, Albania, Armenia, Austria, Barbados, Belarus, Belize, Bolivia, Botswana, Bulgaria, Cameroon, Dominica, France, France: French Guiana, French Polynesia, Grenada, Guinea, Kyrgyzstan, Malaysia, Mauritius, Republic of Moldova, Netherlands, Netherlands: Aruba, Nigeria, Portugal, Romania, Saint Lucia, Senegal, Sierra Leone, Slovakia, Solomon Islands, Spain, Sri Lanka, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Uganda, United Kingdom: Montserrat, Uruguay, Bolivarian Republic of Venezuela, Yemen); **Convention No. 99** (Belize, Colombia, Germany, Grenada, Hungary, Italy, Kenya, Malawi, Mauritius, Morocco, New Zealand, Papua New Guinea, Paraguay, Philippines, Poland, Senegal, Seychelles, Sierra Leone, Slovakia, United Kingdom: Anguilla, Isle of Man, Jersey, Zimbabwe); **Convention No. 131** (Albania, Australia: Norfolk Island, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, France, France: French Polynesia, Martinique, New Caledonia, Kenya, Latvia, Lithuania, Malta, Mexico, Republic of Moldova, Nepal, Netherlands, Netherlands: Aruba, Portugal, Romania, Slovenia, Spain, Sri Lanka, Swaziland, United Republic of Tanzania, Uruguay, Zambia); **Convention No. 173** (Botswana, Bulgaria, Chad, Latvia, Lithuania, Mexico, Slovenia, Spain, Zambia).

## Working Time

### Bolivia

#### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1973)**

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, paragraph 1(a), of the Convention. Permanent exceptions – intermittent work.* The Committee notes that under section 46 of the General Labour Act of 8 December 1942, the rules on working hours laid down by the Act do not apply to wage earners who engage in discontinuous work. **The Committee requests the Government to indicate the types of work covered by this exception.**

*Articles 3 and 6, paragraph 1(b). Additional hours of work.* The Committee notes from the information supplied by the Government in its last report that the labour inspectorate is not, as the Committee said in its previous comments, authorized by section 50 of the General Labour Act to allow up to two additional hours of work a day under any circumstances. It also notes that in support of that assertion, the Government referred to section 37 of Decree No. 244 of 1943 issuing implementing regulations for the General Labour Act, under which additional hours of work may be authorized only “in unforeseeable circumstances, to the extent necessary to avoid hindrance of the normal running of the establishment and to prevent accidents or carry out unpostponable repairs or adjustments on the machinery or plant”. The Committee notes that the exception in section 37 is covered by the exceptions allowed under *Article 3* of the Convention. However, the Committee also notes that according to the Government's report the internal rules of enterprises specify the hours of work and the circumstances in which additional hours of work may exceptionally be authorized. The Committee accordingly understands that the instances in which additional hours of work may be allowed are not limited to those set forth in section 37 of Decree No. 244. It again recalls that *Article 6, paragraph 1(b)*, of the Convention allows the granting of temporary exceptions to the rules on hours of work only in order to enable establishments to deal with cases of abnormal pressure of work. **While noting the Government's statement that because of the present political and social crisis it is unable to ensure that new labour legislation will be enacted in the near future, but that it will make every effort gradually to amend the existing legislation on an ad hoc basis, the Committee again expresses the hope that the Government will take the necessary steps as soon as possible to give full effect to the Convention on this point. It strongly encourages the Government to contact the International Labour Office, and more particularly its regional office in Lima, in order to set up a specific technical assistance programme able to facilitate its search for solutions.**

**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: 1973)**

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, paragraph 1(a), of the Convention. Permanent exceptions – intermittent work.* The Committee notes that under section 46 of the General Labour Act of 1942, the rules on working hours laid down by the Act do not apply to wage earners who engage in discontinuous work. **The Committee requests the Government to indicate the types of work covered by this exception.**

*Article 7, paragraph 2. Additional hours of work.* The Committee notes that the labour inspectorate is not, as the Committee said in its previous comments, authorized by section 50 of the General Labour Act to allow additional hours of work under any circumstances. It also notes that in support of that assertion, the Government referred, in its 2005 report, to section 37 of Decree No. 244 of 1943 issuing implementing regulations for the General Labour Act, under which additional hours of work may be authorized only “in unforeseeable circumstances, to the extent necessary to avoid hindrance of the normal running of the establishment and to prevent accidents or carry out unpostponable repairs or adjustments on the machinery or plant”. The Committee observes that the exception set forth in section 37 is covered by the exceptions allowed in *Article 7, paragraph 2(a)*, of the Convention.

However, the Committee also notes two judgments of the Constitutional Court of Bolivia, attached to the Government's report submitted in 2005 regarding Convention No. 1 (judgment No. 149 of 26 April 2002, *Maria Lourdes Villegas de Aguirre v. Banco del Estado en Liquidación*, and judgement No. 257 of 10 November 2001, *Humberto Rodríguez v. Ex-Banco del Estado*). In both decisions the Court held that the definition of overtime (*horas extraordinarias*) implied that such work was “out of the ordinary” and performed occasionally. The Court also ruled that it was for employers to prove that they needed to impose overtime and that overtime must be authorized by the labour inspector. The Committee notes that the above decisions make no reference to unforeseeable circumstances, accident prevention or urgent repair of machinery. The Committee accordingly understands that the instances in which additional hours of work may be allowed are not limited to those set forth in section 37 of Decree No. 244.

The Committee points out that *Article 7, paragraph 2*, of the Convention allows the granting of temporary exceptions to rules on working hours (apart from the cases of unforeseeable circumstances, accident prevention or urgent repair of machinery) only in the following cases: in order to prevent the loss of perishable goods or avoid endangering the technical results of the work; in order to allow for special work (stocktaking, preparation of balance sheets, closing of accounts, etc.); or to enable establishments to deal with cases of abnormal pressure of work due to special circumstances. **While noting the statement in the report submitted in 2005 by the Government that because of the present political and social crisis it is unable to ensure that new labour legislation will be enacted in the near future, but that it will make every effort gradually to amend the existing legislation on an ad hoc basis, the Committee again expresses the hope that the Government will take the necessary steps as soon as possible to give full effect to the Convention on this point. It strongly encourages the Government to contact the International Labour Office, and more particularly its regional office in Lima, in order to set up a specific technical assistance programme able to facilitate its search for solutions.**

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

## 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 limits to additional hours.* With reference to its previous comments, the Committee notes the Government's report and the conclusions of the technical assistance mission which took place in February 2006. It notes in this respect that, during the mission, the social partners expressed different points of view on the annual limit of additional hours which is required to be set in relation to temporary exceptions in conformity with the provisions of the Convention. The Committee notes that, in the view of the National Council of Organized Workers (CONATO), the number of additional hours should not exceed 200 per year, whilst the National Council of Private Enterprise of Panama (CONEP) considers that the weekly limit of nine additional hours, or 468 per year, should not be changed. Finally, the Government came out in favour of an annual limit of 240 additional hours, while insisting that, in the absence of consensus between employers' and workers' organizations, no amendment could be made to the Labour Code for this purpose. The Committee further notes that, according to the conclusions of the technical assistance mission, this issue could be addressed in two seminars which the Government has requested the Office to organize, on the one hand, with CONEP and, on the other, with CONATO. The Committee hopes that these seminars will lead to significant progress with a view to the amendment of section 36(4) of the Labour Code so as to bring it into conformity with *Article 7* of the Convention. It wishes, however, to remind the Government, as the technical assistance mission did, of its primary responsibility for compliance with international labour standards and the full application of ratified Conventions, and the proactive and committed attitude that it has to demonstrate in reaching tripartite consensus. ***The Committee expresses the firm hope that the Government will take all the necessary measures to resolve this issue without further delay and to bring its legislation into conformity with the Convention on this point.***

The Committee further notes that, during the technical assistance mission in February 2006, CONATO called for the rules on additional hours that are in force in the private sector to be transposed to the public sector. ***In this respect, the Committee requests the Government to indicate the limits (both daily and annual) for additional hours that are applicable in the public sector.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 4** (Cambodia); **Convention No. 14** (Afghanistan, Antigua and Barbuda, Democratic Republic of the Congo, Djibouti, Dominica, Kyrgyzstan, Saint Lucia, United Kingdom: Montserrat); **Convention No. 52** (Djibouti, Kyrgyzstan); **Convention No. 89** (Djibouti); **Convention No. 101** (Djibouti, Saint Lucia); **Convention No. 106** (Afghanistan, Sao Tome and Principe); **Convention No. 171** (Dominican Republic).

## Occupational Safety and Health

### Algeria

#### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1969)**

The Committee notes the brief information provided by the Government in its latest report. It notes the Government's indication that the Committee's comments will be taken into account, in so far as possible, in the context of the process of revising the occupational safety and health laws and regulations, and particularly the revision of Act No. 88-07 of 26 January 1988, with a view to bringing them into conformity with the provisions of the Convention. The Government also refers in its report to the complexity of the issue of the guarding of machinery, on the one hand, and the fact that most of the machinery used in Algeria is imported, on the other. With reference to its previous comments, the Committee notes that a draft executive decree has been formulated and submitted for interministerial examination. In this respect, the Government indicated previously that this draft text is in a preliminary stage in accordance with the established procedures and that it reflects all the relevant provisions of the Convention, as well as those of the Recommendation. **The Committee accordingly requests the Government to adopt the draft executive decree referred to above without delay so as to give effect to the various provisions of the Convention. Nevertheless, and in the absence of more detailed information, the Committee is bound to recall the following points:**

1. *Article 2, paragraphs 3 and 4, of the Convention.* The Committee recalls that section 8 of Act 88-07 of 26 January 1988 which prohibits the manufacture, exhibition, putting up for sale, sale, import, hire or transfer in any other manner of machinery or parts of machinery that do not correspond to current national and international health and safety standards does not determine the machinery that is considered to be dangerous, nor the parts thereof which are likely to present danger, in accordance with the requirements of *paragraphs 3 and 4 of Article 2* of the Convention. It recalls that it had noted that the provisions of Executive Decree No. 90-245 of 18 August 1990 applicable to gas pressure machinery and of Executive Decree No. 90-246 of 18 August 1990 applicable to steam pressure machinery, met the requirements of *Article 2* of the Convention, but that similar measures of general application to machinery covered by the Convention as a whole were needed. **In this regard the Committee wishes to reiterate its previous comments that the objective of Article 2 of the Convention is to guarantee that machines are safe before they reach the user, whereas the provisions of Executive Decree No. 91-05 of 19 January 1991 respecting general safety provisions concern the guarding of machinery once it is in use.**

2. The Committee again draws the attention of the Government to paragraphs 73 et seq. of its 1987 General Survey on safety and the working environment where it indicates that it is essential for the effective application of *Part II* of the Convention that national legislation designate those parts of machinery that present danger and require appropriate guarding (paragraph 82) and that, until there has been a determination of the machinery and parts thereof that present danger, the prohibition of the sale, hire, transfer in any other manner and exhibition of machinery contained in *Article 2* of the Convention remains ineffective. **The Committee recalls its previous reference to paragraph 85 of the 1987 General Survey to indicate that the definition of dangerous machinery and parts thereof should as a minimum cover all those parts enumerated in Article 2 of the Convention.**

3. *Article 4.* Further to its previous comments, the Committee notes the Government's reply that the responsibility referred to in paragraph 2 of the Committee's previous comments was provided for in section 37 of Act No. 88-07 of 26 January 1988 which prescribed sanctions in cases of violations of sections 8, 10 and 34 of the same Act. The Committee recalls once again that, while section 8 of Act No. 88-07 prohibits the manufacture, exhibition, putting up for sale, sale, import, hire or transfer in any other manner of machinery that is dangerous, with a view to its use, section 10 of the same Act explicitly lays down the responsibilities only of those who are involved in the manufacture, import, cession and use of the machinery (manufacturer and importer) and not of the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, and their respective agents. The Committee once again refers to paragraphs 164 to 175 of its 1987 General Survey on safety and the working environment, in which it observes that the general prohibition from manufacturing, selling, hiring or transferring in any other manner machinery which is dangerous is inadequate if it is not accompanied by a provision explicitly requiring these provisions to be applied to the manufacturer, vendor, the person letting out on hire or transferring the machinery in any other manner or their respective agents, in order to comply with *Article 4* of the Convention which expressly establishes the responsibility of these persons, and to avoid any ambiguity. **The Committee urges the Government to take the necessary measures to ensure that the responsibility of the categories of persons mentioned in Article 4 is explicitly established in national legislation and that sanctions are applicable in the event of the violation of these provisions.**

4. *Articles 6 and 7.* Further to its previous comments concerning the responsibility of the employer, the Committee notes the Government's indication that this responsibility is established in section 38 of Act No. 88-07. The Committee notes that the provisions of Act No. 88-07, including section 38, do not fully respond to its previous comments that the use of machinery any parts of which, including the point of operation, is without appropriate guards, is not explicitly prohibited in law. It reiterates its previous indications that sections 40 to 43 of Executive Decree No. 91-05, while requiring the dangerous parts of machines to be guarded, do not explicitly prohibit the use of machinery, the dangerous parts of which are not guarded. The Committee refers once again to paragraph 180 of its 1987 General Survey on safety and the working environment, in which it indicates that *Article 6, paragraph 1*, of the Convention is formulated as a general prohibition to be included in the national legislation and that, in order to observe this provision, it is not enough to require the guarding of machines while in use, without at the same time requiring that the use of machines without appropriate guards is forbidden. The Committee wishes to reiterate the need for the legislation to establish clearly that the obligation to ensure compliance with this prohibition rests on the employer, in accordance with *Article 7* of the Convention.

**The Committee hopes that the Government will do its utmost to take the necessary measures in the very near future.**

## **Hygiene (Commerce and Offices) Convention, 1964 (No. 120)** (ratification: 1969)

1. The Committee notes the information contained in the Government's report.

2. *Article 14 of the Convention. Suitable seats for workers.* The Committee notes the Government's information that the provision of sufficient and suitable seats for workers has still not been the subject of regulations or specific measures either under Act No. 88-07 of 26 January 1988 on occupational health, safety and medicine or under the adopted implementing regulations, but that this requirement is fulfilled in practice. The Committee also notes the Government's statement that it will take preventive measures to reduce or even eliminate the health risks connected with movement, posture and fatigue, in accordance with *Article 14* of the Convention. ***In this context, the Committee asks the Government to adopt suitable regulatory measures to ensure that all workers covered by the Convention have sufficient and suitable seats and also the possibility of using them, and to keep it informed of all progress made in this field.***

3. *Article 18. Protection against noise and vibrations.* Referring to its previous comments, the Committee notes the Government's information that there is a need to lay down regulations classifying the risks connected with noise and vibrations. To this end, the Government is contemplating the preparation of a regulatory text on the prevention of risks connected with noise and vibrations. ***In this context, the Committee requests the Government to take the appropriate regulatory measures as soon as possible to give effect to the provisions of this Article and to keep it informed of all progress made in this area.***

4. *Part IV of the report form. Application in practice.* The Committee notes the Government's information that occupational diseases connected with the risks of noise and vibrations top the list of cases of occupational diseases recorded during the last two years. ***The Committee therefore asks the Government to indicate the manner in which the Convention is applied in practice, for example by supplying information on the number of workers covered by the legislation in force, extracts from inspection reports indicating the number and nature of diseases contracted, and also contraventions reported and penalties imposed.***

## **Azerbaijan**

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1992)**

1. The Committee notes that, in addition to resubmitting the report of 2003 and 2006, the Government reports that it was not at present able to provide any collective agreements relevant for the further application of *Articles 11, 12 and 13* of the Convention.

2. *Article 11, paragraph 1. Prohibition to use machinery without the guards provided being in position.* The Committee notes that the Government refers to general provisions in sections 213 and 215 of the Labour Code concerning the powers of the executive authorities in the labour protection field and the responsibilities of the owner of an enterprise and the employer in relation to occupational safety and health, and indicates that regulations were being developed in order to give effect to this provision of the Convention. ***The Committee hopes that the draft legislation giving effect to this provision of the Convention will be adopted in the near future and requests the Government to transmit copies thereof once it has been adopted.***

3. *Article 12. Protection of the rights of workers under national social security or social insurance legislation.* The Committee notes the Government's additional information that a "Compulsory life assurance against industrial accidents" has been elaborated in accordance with paragraph 2.6 of "The State Program for the Implementation of the Employment Strategy of the Republic of Azerbaijan (2007–10)" approved by Decree No. 167 of 15 May 2007 as well as section 211 of the Labour Code. It also notes that a draft law on "Compulsory personal insurance of employees against industrial accidents and occupational diseases" is being elaborated. ***The Committee hopes that the draft law will be adopted in the near future and requests the Government to transmit copies of relevant legislation once it has been adopted.***

4. *Article 13. Application to self-employed workers of the obligations of employers and workers.* The Committee notes the information provided concerning the ongoing revision of the Labour Code and the declared intent of the Government to introduce amendments and additions thereto regulating the responsibilities, inter alia, of independent employees. ***The Committee hopes that these amendments will be adopted in the near future and requests the Government to transmit copies thereof once they have been adopted.***

5. *Part V of the report form. Application in practice.* ***The Committee requests the Government to provide a general appreciation of the manner in which the Convention is applied, including, for instance, extracts from labour inspection services reports, statistics on the number of workers covered by the legislation, the number and nature of contraventions reported, as well as any other information allowing the Committee to assess more accurately how the Convention is applied in practice in the country.***

## Bolivia

### **Benzene Convention, 1971 (No. 136) (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:

1. 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).***

2. *Article 9 of the Convention. 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.***

## Bosnia and Herzegovina

### **White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1993)**

1. *Articles 1–7 of the Convention.* The Committee notes the Government's brief first report on the application of the Convention. It also notes that the report does not provide any information on the provisions of national laws or regulations or other measures giving effect to the Convention. The Committee recalls the obligation on all member States, under article 22 of the Constitution of the ILO, to submit reports on the effect given to ratified Conventions that are to be prepared according to the report forms adopted by the Governing Body of the ILO. Under the heading "Practical guidance for drawing up reports", the report forms request, in case of first detailed reports following the entry into force of the Convention for a State, "full information ... on each of the provisions of the Convention and on each of the questions set out in the report form". ***The Committee requests the Government to submit a detailed report on the application of the Convention, in accordance with the report form.***

2. *Part V of the report form.* ***The Committee particularly draws the Government's attention to Part V of the report form and requests the Government to provide additional information in its next report on the number of labour inspections carried out, the number of contraventions reported, particularly the nature of these contraventions, and on the number of workers covered by this Convention.***

[The Government is asked to report in detail in 2008.]

## Brazil

### **Benzene Convention, 1971 (No. 136) (ratification: 1993)**

1. The Committee notes the comments of the Union of Workers in the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products (SINDILÍQUIDA/RS), which were received with attachments on 4 October 2007 and sent to the Government on 8 November 2007. It notes that these observations relate to the alleged non-application of the following Articles of the Convention: *Article 5*, Preventive occupational hygiene and technical measures; *Article 6*, Measures taken to prevent the escape of benzene vapour into the air of places of employment; *Article 8*, Adequate means of personal protection against the risk of absorbing benzene through the skin and of inhaling benzene vapour; *Article 9*,

Periodic medical examinations and exceptions; *Article 14(c)*, Inspection services. **The Committee requests the Government to reply to the observations made by SINDILQUIDA/RS.**

2. The Committee also notes its previous comments relating to the Government's reply to the observations made by several unions from various industries, and it once again invites the Government to make comments on the following matters.

3. *Articles 4 and 7, paragraph 1, of the Convention. Prohibition to use benzene in certain legally specified work processes and requirement to carry out work processes involving the use of benzene in a closed system.* With reference to its previous comments, the Committee notes that the Standing National Benzene Commission (CNPBz) has initiated a discussion on the adoption by companies of best practices and the use of new technologies and equipment with a view to achieving the objectives set out in Annex 13 of Normative Regulation No. 15 of Ordinance No. 3214 of 1978. Seminars and technical meetings have been organized with a view to reaching an agreement on substantive technical changes in industrial processes. Workshops are also envisaged to discuss the best practices to be adopted in relation to certain equipment, such as vents and flanges, oil-water separators, hermetic doors in coking plants and other relevant technical matters. The Committee hopes that these activities will result in a more effective application of these provisions of the Convention in the various types of factories, including those which use benzene in the process of producing alcohol anhydride as a dehydrating agent in azeotropic distillation, in relation to which Administrative Decree SSST No. 27 of 8 May 1998 establishes deadlines for the replacement of benzene. **The Committee requests the Government to keep it informed of the outcome of these discussions and of any progress achieved in this respect. It once again requests the Government to provide a copy of the above Administrative Decree.**

4. *Article 6, paragraph 2. Level of concentration of benzene in the air of places of employment.* The Committee notes the proposal made by employers during the ordinary meeting of the CNPBz in June 2005 to reduce the technical reference value applicable in the metal sector from 2.5 to 1 ppm. This value would be immediately applied to new enterprises, while others would have a period of ten years to adapt. The Committee also notes that the workers and the Government made a counterproposal of a reference value of 1 ppm for the steel sector and 0.5 ppm for petrochemicals. This value would be immediately applied to new enterprises, while other enterprises would have a period of five years to adapt. **The Committee requests the Government to keep it informed of the outcome of the negotiations on reference values at forthcoming meetings of the Standing National Benzene Commission, and any progress achieved in this respect.**

5. *Article 7, paragraph 2. Measures taken to ensure that places of work in which benzene or products containing benzene are used are equipped with effective means to ensure the removal of benzene vapour.* In its previous comment, the Committee drew the Government's attention to the need to install ventilation systems in workplaces, not only when a high concentration of benzene may occur (as laid down in section 5.4 of Annex 13-A to the Agreement on Benzene, 1995), but also whenever it is not practicable for the work processes to be carried out in an enclosed system. **As the Government's latest report does not contain any information on this point, the Committee once again requests the Government to adopt measures to give effect to this provision.**

6. *Article 8, paragraph 1. Adequate means of personal protection against the risk of absorbing benzene through the skin.* In its previous comments, the Committee drew the Government's attention to the requirement to take measures to ensure the protection of workers whenever they may have skin contact with liquid benzene or products containing benzene, and not only in critical situations, as established in section 5.4 of Annex 13-A of the Agreement on Benzene, 1995. **As the Government's latest report does not contain any information on this point, the Committee once again requests the Government to adopt measures to give effect to this provision.**

7. *With reference to its previous comments and in the absence of specific information on this matter, the Committee requests the Government to indicate whether the Programme for the Prevention of Occupational Exposure to Benzene (PPEOB), which was to be established pursuant to section 5 of Annex 15-A to the national Agreement on Benzene, 1995, has already been adopted and has been implemented; it also requests the Government to provide a copy of the Programme with its next report.*

[The Government is asked to reply in detail to the present comments in 2008.]

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1990)**

1. The Committee notes the observations submitted by the Union of Workers in the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products (SINDILQUIDA/RS), received together with attachments on 4 October 2007 and sent to the Government on 8 November 2007. It notes that the above organization alleges non-application of the following Articles of the Convention: *Articles 4 and 5*, Information on carcinogenic substances and agents and measures required; medical examinations and supervision of the state of health of the workers; and *Article 6(c)*, Inspection services. **The Committee requests the Government to respond to the observations by SINDILQUIDA/RS.**

2. The Committee refers to its previous comments on several provisions of the Convention, and again invites the Government to comment on the following matters.

3. *Article 2, paragraphs 1 and 2. Replacing substances and agents to which workers may be exposed in the course of their work by non-carcinogenic substances or agents or by less harmful substances or agents and reducing the number*

of workers exposed to carcinogenic substances or agents. The Government refers to a series of instruments under which enterprises are, in general, required to adopt risk management programmes based on the principles of the prevention and limitation of occupational risks in the context of the ecological risk prevention programme (NR-09). The Committee takes note of the measures conducted by FUNDACERO and the Occupational Health and Safety Secretariat of the Ministry of Labour to ensure that priority is given to measures to replace carcinogenic substances and agents with less harmful substances and agents, and to reduce to a minimum the number of workers exposed and the length and level of exposure. **The Committee requests the Government to send information on the effect given in practice to these general legislative provisions and on the results of the measures taken by FUNDACERO and the Occupational Safety and Health Secretariat.**

4. *Article 3. Measures to protect workers against the risks of exposure to carcinogenic substances or agents and to establish a system of records.* The Committee notes from the Government's last report that a national system for recording the various types of occupational cancer is being set up. It hopes that this national system will be in operation in the near future. It reminds the Government that the system for recording data for the prevention and control of occupational cancer involves keeping records of exposure and of medical examinations so that, as the years go by, it is possible to ascertain the effectiveness of the preventive measures and to identify remaining dangers or new ones. **Referring to section 9.2.1(c) of Regulatory Standard No. 9 (NR-9) of 29 April 1994 which requires enterprises to keep a register of data, the Committee requests the Government to specify the data to be recorded in this register.**

5. *Article 5. Providing for biological examinations or other tests of workers during the period of employment and thereafter.* With reference to its previous comments, the Committee again points out that in the event of exposure to specific occupational hazards, in addition to the medical examinations provided for in Regulatory Standard No. 7 (NR-7), special tests must be envisaged in order to detect exposure level and determine responses. Noting that the Government's report contains no information in reply to its comments, the Committee again draws the Government's attention to the indications in paragraph 5.2 of the ILO publication "Occupational cancer: Prevention and control", in the *Occupational Safety and Health Series* No. 39, Geneva, 1989, which explain the importance of supplementing the medical examination of workers with biological monitoring. **The Committee accordingly asks the Government to indicate the measures taken or envisaged to ensure that the workers concerned undergo not only medical examinations at the various stages but also biological and other tests and investigations necessary to evaluating their exposure with a view to supervising their state of health in view of the occupational risks to which they are exposed.**

6. *Article 6(c) and Part IV of the report form. Inspection service responsible for supervising the practical application of the Convention.* The Committee notes that the Government's report does not contain the information it requested in its previous comments on the measures taken in the event of systematic failure to comply with the legislation on occupational safety and health and failure to pay the fines imposed for breach of the legislation, as was the case with the enterprise "Bramix Brasileira de Mármore Exportada SA". **The Government is once again asked to indicate the measures taken to ensure that the legislation on occupational safety and health is effectively applied.**

[The Government is asked to reply in detail to the present comments in 2008.]

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1982)**

1. The Committee notes the information provided by the Government in its report. In particular, it notes the information provided on the application of *Article 1, paragraph 1*, and *Article 8, paragraphs 1 and 3*, Criteria for determining the hazards of exposure to air pollution, noise and vibration and exposure limits for rural workers; *Article 11, paragraph 3 of the Convention*, Alternative employment.

2. The Committee also notes the observations submitted by the Union of Workers in the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products (SINDILÍQUIDA/RS) on 28 August and 4 October 2007 and sent to the Government on 11 September and 5 October 2007. The Committee notes that the observations submitted by SINDILÍQUIDA/RS concern the alleged non-application by the Government of the following provisions of the Convention: *Article 5, paragraphs 3 and 4*, Collaboration between employers and workers, right for representatives of the employers and workers to accompany inspectors; *Article 6, paragraphs 1 and 2*, Employers' responsibility for compliance with prescribed measures, and collaboration between two or more employers undertaking activities simultaneously at one workplace; *Article 10*, Personal protective equipment; *Article 13*, Information and training on protection against hazards in the working environment due to air pollution, noise and vibration; and *Article 16(b)*, Inspection services. **The Committee requests the Government to provide a detailed response to the observations submitted by SINDILÍQUIDA/RS.**

3. With reference to its previous comments concerning the working conditions in the group of telecommunication companies TELEMAR, the Committee notes that the Government reports that, in the period 1996–2005, TELEMAR was subjected to 179 routine inspection visits, as well as inspections resulting from complaints by trade unions and workers and targeted state control programmes. The principal issues raised included failure to draw up and implement compulsory programmes, especially the Programme on prevention of environmental hazards and the Programme of medical control of occupational health, and absence of basic risk management measures. The Government points out that due to considerable reduction of the number of TELEMAR employees, a considerable level of subcontracting of its activities in recent years,

the use of smaller companies, especially in the case of installation and maintenance of telephone lines – that have less economic capacity to manage occupational risks adequately – the situation with respect to occupational safety and health has become more precarious and less secure. The Committee notes the information provided by the Government that these issues have been examined in various studies, that the National Commission for Ergonomics in the Ministry of Labour and Employment have issued technical recommendations for the activities of telemarketing and call centres so as to contribute to the prevention, early detection and control of occupational diseases, including hearing loss of telephone operators and that tripartite consultations are ongoing on a proposed revision of Normative Regulations on Ergonomics (No. 17) to take into account these technical recommendations. **The Committee requests the Government to provide detailed information on measures taken, in law and practice, to address the reported deteriorating occupational safety and health conditions in the telecommunication industry.**

4. *Article 5, paragraph 4. Right for employers' and workers' representatives to accompany inspectors.* With reference to its previous comments concerning the observations made by the various organizations of public employers (SERGIPE) that a regional delegate of the Ministry of Labour would have prohibited inspectors from being accompanied by workers' representatives, the Committee notes the Government's indication that point 1.7 of Order 3214/78, Normative Regulations 01 (NR 01), amended by Order 03 of 7 February 1988, guarantee compliance with this provision of the Convention. The Committee reiterates what was noted in its observation of 2002, that the problems highlighted by the workers' organizations did not arise from the absence of a regulation, but from the failure to apply and respect the relevant regulations, both by the employers and by a representative of the Government. **The Committee requests the Government to provide information on measures ensuring the application in practice of Article 5, paragraph 4, giving to workers' and employers' representatives the opportunity to accompany inspectors supervising the application of the measures prescribed in pursuance of this Convention.**

5. *Article 12. Notification to the competent authority of the use of processes, substances, machinery and equipment which involves exposure of workers to occupational hazards due to air pollution.* The Committee notes the Government's reference to legislation which requires notification to the competent authority of the use of specific processes, substances or materials related to the use of asbestos (NR15, Order 3214/78, Annex No. 12) and benzene (Order 14/95, Annex No. 13-A), but notes that the report is silent as regards a more general notification requirement. **The Government is requested to provide information on measures taken in order to subject the use of processes, substances, machinery and equipment necessary for the adequate protection of workers against the hazards due to air pollution, noise or vibration to a notification requirement to the competent authority.**

6. *Part IV of the report form. Practical application of the Convention.* The Committee notes the statistical information provided by the Government in its report which reflects labour inspection activities for the period 1999–2004, in general, as well as in the sectors of construction, electricity, machines and agriculture. **The Committee requests the Government to continue to provide statistical data allowing it to evaluate the manner in which the Convention is applied in the country.**

[The Government is asked to reply in detail to the present comments in 2008.]

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1992)**

1. The Committee notes the comments of the Union of Workers in the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products (SINDILÍQUIDA/RS), which were received with the attachments on 4 October 2007 and sent to the Government on 8 November 2007. It notes that these observations relate to the alleged non-observance of the following Articles of the Convention: *Article 9*, System of inspection and penalties; *Article 16, paragraph 3*, Protective clothing and protective equipment; *Article 17*, Collaboration between enterprises engaged in activities simultaneously at one workplace; *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 requests the Government to reply to the comments of the SINDILÍQUIDA/RS.**

2. The Committee refers to its previous comments concerning the Government's reply to the observations made by several unions from various industries and it once again requests the Government to provide comments on the following issues.

3. *Footwear industry.* The Committee notes the information provided in reply to the observations of the Democratic Federation of Shoemakers of the State of Rio Grande do Sul and the Union of Workers of Irmãos and MRRO Reuter, including information on inspections of enterprises in the sector. It notes that, according to the regional inspection office, working conditions in such enterprises in the State of Rio Grande do Sul are currently improving, as demonstrated by the statistics provided. **Noting that these improvements appear to contribute to greater effect being given to Article 7 of the Convention, under which the situation regarding occupational safety and health and the working environment shall be reviewed at appropriate intervals with a view to identifying major problems, evolving effective methods for dealing with them and priorities for action, the Committee requests the Government to keep it informed of any progress achieved in this respect.**

4. *Marble, granite and lime industry.* The Committee notes the information provided in reply to the observation of the Union of Workers of the Marble, Granite and Lime Industry of the State of Espírito Santo (SINDIMARMORE),

according to which the mortality rate from employment accidents in the mining sector is decreasing and that this decrease appears to be statistically confirmed by data provided by the Government. The Committee also notes the information provided on the positive results achieved through various activities undertaken to improve the general situation relating to occupational safety and health. Nevertheless, as recognized by the Government, the mortality rate still remains high, especially in the extraction of stone, sand and clay industries, despite the efforts made, including the targeting of mining in the annual inspection objectives for state and regional inspectorates, such as those carried out in the States of Minas Gerais and d'Espírito Santo. ***The Committee would be grateful if the Government would continue to provide information on the measures taken and the results achieved in improving the overall occupational safety and health situation in the marble, granite and lime industries.***

5. *The fishing sector.* The Committee notes the information provided in reply to the observations of the Union of Fishers of Angra dos Reis, including the indication that the Government is in the process of improving the effectiveness of the inspection services by targeting inspection on particularly hazardous activities. Accordingly, the Ministry of Labour and Employment has given priority to inspections in the fishing sector. The Committee notes the Government's statement that working conditions in the sector have been considerably improved. It notes with interest the reference made by the Government to a major training programme for inspectors, particularly those responsible for the enforcement of occupational safety and health law, through a programme of training and further training for over 500 inspectors throughout Brazil covering such fields as ergonomics, occupational risk management, accident analysis methodology, rural work and monitoring of the strategies adopted. ***Noting that this initiative could have a positive impact that is not limited to the fishing sector, the Committee requests the Government to provide information in its next report on the results of these programmes and courses, as well as their impact on the occupational safety and health situation, not only in the fishing sector, but also in other sectors.***

6. *Public services.* The Committee notes the information provided in reply to the observations made by the Federal Union of Public Service Workers of the State of Goiás (SINDSEP-GO), including the indication that the impact of initiatives to improve occupational safety and health in the public sector employing the members of SINDSEP-GO has been limited, inter alia, because of the distribution of competences between the federal and local government in relation to the municipal and state public service, respectively. This limits the possibility for the labour inspectorate, which is under the responsibility of the Ministry of Labour and Employment, to take direct and effective action, with the result that its activities are difficult and dispersed. ***Noting the initiative to increase the representativeness of the Standing Joint Tripartite Commission (CTPP) through the inclusion of representatives of the public sector, the Committee hopes that appropriate measures will be taken to ensure the effective application of the Convention in public services and requests the Government to continue providing information on the measures taken and the results achieved in this respect.***

7. *Articles 1 and 2. Application of the Convention to all branches of economic activity and to all workers in the branches concerned.* The Committee notes with interest the information provided on the efforts made by the Government to extend occupational safety and health protection to all Brazilian workers, inter alia, through legislation which also confers the right to such protection to workers in the informal economy. The Committee welcomes this initiative, which should have the effect of extending the scope of application of the Convention. ***It requests the Government to keep it informed not only of the progress achieved, but also of the manner in which this initiative is given effect in practice.***

8. *Articles 4 and 8. Formulation of a coherent national policy and consultation with the representative organizations of employers and workers on the formulation, implementation and periodic review of the national occupational safety and health policy.* The Committee notes with interest that the Executive Inter-Ministerial Group on Safety and Health (GEISAT) published Inter-Ministerial Ordinance No. 800 of 3 May 2005, issuing the draft national occupational safety and health policy, which was formulated by the Group, for public consultation. The Committee also notes the Government's indication that the CTPP has become a forum for active discussion and deliberation on occupational safety and health issues. The Committee welcomes this initiative, which could contribute to the more effective implementation of the national occupational safety and health policy and the prevention of accidents and injury arising out of, linked with, or occurring in, the course of work. ***The Committee requests the Government to describe the manner in which the most representative organizations of employers and workers were also consulted during the formulation of Inter-Ministerial Ordinance No. 800 of 3 May 2005. The Committee also requests the Government to keep it informed of any progress achieved in relation to the national occupational safety and health policy.***

9. *Article 9, paragraph 1. Adequate and appropriate system of inspection to ensure the enforcement of laws and regulations concerning occupational safety and health.* The Committee notes with interest the information provided in the report relating to the adoption of Decree No. 4552 of 27 December 2002 approving the labour inspection regulations, which entrust inspectors with certain functions relating to the application of international treaties and conventions ratified by Brazil. The Committee also notes the indication that the inspection services are currently targeting the evaluation of employment risks and investigations following employment accidents. It further notes that there is now greater collaboration with the national Accident Prevention Commission. ***The Committee hopes that this progress will make it possible to give greater effect to the Convention and to improve the implementation of the national occupational safety and health policy. It requests the Government to keep it informed of the progress achieved in this respect.***

10. Furthermore, the Committee notes the specific references made by the Government to the adoption of legislative and other legal texts relating to other Conventions covering the protection of workers in specific branches, such as

agriculture. As this progress appears to be preparing the ground for a future ratification of the ILO Convention covering this field, the Committee invites the Government to examine the possibility of ratifying in the near future the Safety and Health in Agriculture Convention, 2001 (No. 184).

[The Committee is asked to reply in detail to the present comments in 2008.]

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1990)**

1. The Committee notes the information provided by the Government in its comprehensive reply to the Committee's previous comments formulated in connection with the observations made by the Chemical, Petrochemical and Related Industries of Triunfo/RS Trade Union (SINDIPOLO).

2. The Committee notes that the Government reports that in addition to the 12 inspection visits previously reported, another seven inspections had been carried out at the company Petroflex Industria e Comércio SA and that, during these inspections, several technical and organizational infringements which had a direct impact regarding the current situation with safety and health at work were noted. The following infringements were noted during inspection visits in 2004:

- lack of inspection at the correct intervals of pressure vessels (boilers) as well as correct documentation on the boilers, failure to establish the compulsory Internal Committee for Prevention of Accidents (CIPA) (visit in February);
- failure to issue a notice of accident at work, lack of training of workers on emergency first aid, failure to record medical data in the medical file, failure to carry out the actions required under the Programme of Prevention of Environmental Hazards (PPRA) with subcontractors, failure to inform about risks to the CIPA of the subcontractors; failure to identify risks in the PPRA, failure to carry out quantitative evaluations of environmental agents, failure to hold special meetings of the CIPA when accidents occur, failure to adopt risk control measures (visit in August);
- lack of safety belt, the inadequacy of Programmes of Prevention of Environmental Hazards, lack of environmental control measures, insufficient guarding of machinery, lack of risk assessment, guards poorly fixed to machines, lack of personal protective equipment or acquisition of inadequate equipment (visit in 2004).

3. The Committee also notes from the Government's report that as a result of these infringements the following accidents had occurred:

- the accident on 15 August 2004, when 27 tonnes of benzene were spilled on a neighbouring company, "Innova". Twenty workers were affected, and officially recorded as victims. There was no prior evaluation of this possibility and no control measures were in place and there was neither information nor training of workers in this respect. The analysis of the accident revealed failures of risk assessment, failures of emergency planning, presence of a dangerous (flammable) substance without adequate control and management;
- the fatal accident on 14 October 2004, of an employee of the subcontractor "Motrix" when the worker's foot was caught in a rubber rolling press, from which the guard had been removed from the shaft and flanges, and he lost his foot and ankle because of failures to anticipate and detect risks, guards which had been removed, interference of ambient noise.

4. The Committee draws the Government's attention to that Convention (*Article 1*) contains requirements for the establishment and maintenance of a safe and healthy working environment which will facilitate optimal physical and mental health relating to work as well as the adaptation of work to the capabilities of workers in the light of their state of physical and mental health and that, in accordance with *Article 5*, within a system of occupational health services for all workers, the functions of such services shall include: identification and assessment of the risks from health hazards in the workplace; surveillance of the factors in the working environment and working practices which may affect workers' health; provision of advice on organization of work, including the design of workplaces, on the choice, maintenance and condition of machinery and other equipment and on substances used in work; advice on individual and collective protective equipment; participation in the development of programmes for the improvement of working practices as well as testing and evaluation of health aspects of new equipment; and, collaboration in providing information, training and education in the fields of occupational health and hygiene and ergonomics. ***The Committee requests the Government to take appropriate measures without delay to ensure that there is better compliance with occupational safety and health standards to reduce the occupational accident rate in this sector of activity, and requests the Government to continue to provide information on any progress achieved in this regard.***

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

### **Chemicals Convention, 1990 (No. 170) (ratification: 1996)**

1. The Committee notes the observation submitted by the Union of Workers in the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products (SINDILÍQUIDA/RS), received together with attachments on 4 October 2007 and sent to the Government on 8 November 2007. It notes that the above organization alleges non-application of the following Articles of the Convention: *Article 12*, Exposure to chemicals and evaluation; *Article 13*, Assessment of risks arising from the use of chemicals, limiting exposure and arrangements to deal with emergencies; *Article 15*, Information and training of workers. ***The Committee requests the Government to respond to the comments by SINDILÍQUIDA/RS.***

2. The Committee refers to its previous comments, including the observations by the Union of Workers of the Chemical, Petrochemical and Related Industries (SINDIPOLO) of Triunfo/RS, raising concerns about the manner in which the occupational safety and health laws are applied in the petrochemicals sector, and the Government's reply to these observations. **The Government is again asked to specify whether effect is given, or whether it plans to give effect, through laws and regulations, to the following provisions of the Convention:**

- *Article 2. Definition of terms.*
- *Article 4. Application and periodic review of a national policy on safety in the use of chemicals at work.*
- *Article 5. Dangerous chemicals, the use of which is prohibited or restricted.*
- *Article 8, paragraph 1. Chemical safety data sheets.*
- *Article 8, paragraph 3. Marking and labelling.*
- *Article 9. Responsibilities of suppliers; periodical review of labels and chemical safety data sheets and identification and assessment of non-classified chemicals.*
- *Article 10, paragraphs 1 and 2. Identification of chemicals.*
- *Article 10, paragraphs 3 and 4. Only labelled products to be used: a record to be kept of the hazardous chemicals used at the workplace.*
- *Article 12(d). Records to be kept of the monitoring of the working environment and of the exposure of workers.*
- *Article 18, paragraphs 1 and 2. Right of workers to remove themselves from danger resulting from the use of chemicals.*
- *Article 18, paragraph 4. Disclosure of the specific identity of an ingredient of a chemical mixture to a competitor.*
- *Article 19. Communication by the exporting member State to any importing country of the prohibition on using certain chemicals.*

3. **The Government is also requested to provide further information on the application of the relevant legislation in practice in relation to the following provisions of the Convention:**

- *Articles 6 and 7. Criteria for the classification of chemicals and the assessment of hazardous properties of mixtures.*
- *Article 16. Cooperation between employers and workers regarding safety in the use of chemicals at work.*
- *Article 17. Duty of workers to cooperate with their employers in the latter's discharge of their responsibilities.*
- *Article 18, paragraph 3. Right of workers and their representatives.*

4. *Part V of the report form. General appreciation of the application of the Convention in practice.* The Committee notes the Government's statement that the Department of Occupational Safety and Health, attached to the Ministry of Labour and Employment, is currently improving its statistics base. **The Committee requests the Government to provide all available information, including all statistics following the abovementioned improvement, on the number of workers exposed to chemicals, disaggregated by sex if possible, extracts from reports of the inspection services showing the number and nature of contraventions reported, and any official publications dealing with chemical-related problems, etc.**

[The Government is asked to reply in detail to the present comments in 2008.]

## Burkina Faso

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1997)**

1. The Committee notes the information in the Government's reports submitted in 2007, including the reference to various legislative and regulatory texts.

2. *Article 2 of the Convention. Implementation and periodical review of a coherent national policy on occupational health services.* Further to its previous comments, the Committee notes the information in the Government's report, according to which a national occupational safety and health policy is still being prepared. This involves a framework document on national policy in this area, accompanied by a national action plan. The measures concerning the implementation and periodical review of the policy are set forth therein. **The Committee hopes that this document will be adopted in the very near future and asks the Government to provide a copy thereof once it has been adopted.**

3. *Article 6. Provision for the establishment of occupational health services.* Further to its previous comments, the Committee notes that some progress has been made in this respect, in that the action plan accompanying the framework document on national policy relating to occupational health services will cover not only the formal sector, but also the informal sector and the agricultural sector. The Committee notes, however, that the Government has not provided any clarification as to the points raised in its previous comments. It is therefore obliged to reiterate its request concerning the following points: *Article 3*, Establishment of health services; *Article 5(a)*, Identification of risks from health hazards in the

workplace; *Article 5(b)*, Surveillance of the workplace; *Article 5(c)*, Role of health services in the planning and organization of work; *Article 5(d)*, Role of the health services in testing and evaluating new equipment; *Article 5(e) and (i)*, Role of the health services in ergonomics; *Article 5(h)*, Role of the health services in vocational rehabilitation; *Article 5(j)*, Emergencies and first aid; *Article 9, paragraph 2*, Cooperation of the health services with other services in the enterprise; *Article 10*, Independence of health service personnel; *Article 11*, Qualifications of health service personnel; *Article 15*, Notification to health services of absences from work for health reasons. ***The Committee asks the Government to take these points into consideration within the context of the preparation of the new national policy, so as to give full effect to the provisions of the Convention.***

4. *Part VI of the report form. Application in practice.* The Committee notes the information provided by the Government, according to which 162,372 workers in the private sector and 70,308 workers in the public sector are covered by the legislation. Furthermore, the Committee invites the Government to request, at the appropriate time, ILO assistance with the view to the effective application of the Convention. ***The Committee hopes that such technical assistance can be carried out and asks the Government to provide information on any steps taken in this respect with the relevant ILO bodies. The Committee requests the Government to continue providing information concerning the practical application of the Convention in order to follow the progress made.***

## Cambodia

### **White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1969)**

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

The Committee notes the Government's information to the effect that Cambodia does not yet have any legislation regulating the use of white lead or of all types of products containing lead. The Committee also notes the Government's information to the effect that a revised draft Labour Code is being examined by the National Assembly. Lastly, it notes the Government's information to the effect that imported products are not subject to controls and that the local products do not appear to contain lead. The Committee nevertheless recalls that in its 1994 report, the Government indicated that the use of white lead was very widespread in the country, particularly during this period of reconstruction. With regard to the draft Labour Code currently before the National Assembly, the Committee recalls the comments made by the ILO concerning the draft Labour Code and expresses the hope that the Government will take the necessary measures to prohibit or regulate the use of white lead within the framework of provisions relating to hygiene and safety of workers (sections 228 to 247 of the draft Labour Code). ***The Committee hopes therefore that the Government will soon be able to announce the adoption of the draft Labour Code, taking the provisions of the Convention into account. It requests the Government to indicate in its next report any progress made in this regard.***

## Chile

### **Asbestos Convention, 1986 (No. 162) (ratification: 1994)**

With reference to its previous comment concerning the observations made by the World Federation of Trade Unions (WFTU) on the use of asbestos by a number of enterprises and its harmful effects both to the workers exposed to it and on the population in the vicinity (*Article 19, paragraph 2, of the Convention*), the Committee notes with regret that the Government's detailed report on the application of this Convention, examined further in a request addressed directly to the Government, contains no reply to its comments nor any information on measures taken in response thereto. It hopes that a report will be submitted for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous observation, which read as follows:

1. The Committee notes the Government's comments indicating that the exposure of workers had occurred many years earlier, even before the Convention was adopted, and when the dangers of exposure to asbestos were not realized. The Government indicates that at the time the Convention was ratified, the Supreme Decree No. 745/92 concerning the Regulation on basic health and environmental conditions in workplaces was already in force. According to the Government, this instrument contains an obligation for the employer to maintain in workplaces the necessary conditions to protect the life and health of the workers. The Government however indicates that the time when asbestos is dangerous is when it is being handled during manufacture of products. It indicates, furthermore, that as from July 2000 the Ministry of Housing and Urbanism has prohibited the use of products or elements containing asbestos cement in construction work. It also indicates that by mistake asbestos cement and free asbestos have been assimilated and classed as having similar levels of toxic hazard. The Government recalls that in 1991 the Ministry of Health indicated, through the Department of Occupational Health, that "the risk of cancer is probably undetectable or extremely low and has not been really quantified". The Government indicates that the firm mentioned in the WFTU's comments, the Sociedad Industrial Pizarreño, SA, did manufacture fibre cement products for construction, using asbestos as a raw material. Nevertheless, the Government indicates that this firm has not manufactured products with asbestos since 1999. Since that year, according to the Government, asbestos-free processes have been used by firms of very different sizes, embracing over 80 per cent of national fibre cement production which has consequently involved a reduction in imports of asbestos in the same proportion. Finally, the Government indicates that the affected persons concerned have legal advice and access to the courts.

2. Noting the Government's comments, the Committee wishes to recall that, as indicated *inter alia* in the preparatory work on Convention No. 162, "The health consequences of asbestos exposure were recognized rather late ... The main reason for these delays has been the long latency – up to several decades – between the start of work with asbestos and the development of clinical signs of the diseases. The illness can also appear many years after cessation of work in persons who had left jobs where they had been exposed to asbestos without any evident health impairment" (ILO: Report VI(1), International Labour Conference, 71st

Session, Geneva, 1985, pages 3 and 4). Consequently, the protection measures to be adopted must take into account the fact that workers who were exposed to the harmful effects of asbestos even before the Convention was adopted or ratified by a specific State. Proof is furnished by the fact that, as the Government indicates, provisions had been adopted in Chile before ratification of the Convention. Moreover, the fact that a number of firms have stopped using asbestos in their manufacturing processes does not mean that the harmful effects of the material on workers' health have disappeared, all the more so since the Committee understands from the Government's statement that the number of firms may be very large. Consequently, it is now that the harmful effects of exposure to asbestos are being felt and it is now that workers who were exposed should be provided, inter alia, with such medical examinations as are necessary to supervise their health in relation to the occupational hazard they incurred, as provided in *Article 21, paragraph 1, of the Convention*. Furthermore, the same Report of the Conference also states that "Although there is no evidence of adverse effects of commercial use of asbestos on the health of the general population, the question of possible long-term health effects arises because of the uncertainty about safe limits of exposure to carcinogens" (ILO: Report VI(1), International Labour Conference, 71st Session, Geneva, 1985, page 5). The Committee accordingly considers that appropriate measures should be taken to prevent pollution of the general environment by asbestos dust released from the workplace, as provided in *Article 19, paragraph 2, of the Convention*, and that action should be taken to screen those persons of the population who have been subject to exposure to asbestos, in order to adopt appropriate measures in favour of them. ***The Committee therefore requests the Government to adopt all necessary measures to give effect to national legislation covering activities related to exposure to asbestos, thus guaranteeing application of the relevant provisions of the Convention.***

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

## Costa Rica

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1966)**

1. The Committee notes the Government's report received in September 2005.

2. It also notes the comments sent in October 2006 by the Union of Public and Private Enterprise Workers (SITEPP), which refer, among other matters, to occupational health and particularly air pollution in workplaces. ***Since these comments are relevant to the application of the Convention, the Committee asks the Government to send information in response to them.***

3. *Article 1 of the Convention. Application of the Convention to establishments, institutions and administrative services in which the workers are mainly engaged in office work.* For several years, in its comments on the application of the Convention the Committee has been drawing the Government's attention to the observations made by the Association of Customs Officials (ASEPA) stating that under Executive Decree No. 23116-MP, customs employees may be transferred, depending on the nature of their duties, to different parts of the country, indefinitely in some cases, and that in some instances they may be exposed to heat, cold, dust, damp, noise, toxic gases, and cramped and uncomfortable conditions. They may also be exposed to eye strain, knocks, burns and other risks. In view of the fact that *Article 1* of the Convention specifies that the Convention applies to trading establishments and establishments, institutions and administrative services in which the workers are mainly engaged in office work, the abovementioned Decree needs to be amended in order to give full effect to the Convention. The Committee observes that the Government has not addressed the above issue and has not, as yet, responded to the matters raised by ASEPA. ***It accordingly requests the Government once again to provide information on the matters raised by ASEPA and to take the necessary steps to ensure that the legislation in question establishes suitable conditions for customs employees.***

4. *Article 17. Protection of workers against substances, processes and techniques which are obnoxious, unhealthy or toxic or for any reason harmful.* The Committee observes that the abovementioned Executive Decree states several times that various categories of customs employees may work in an environment where there are toxic gases. ***The Committee hopes that the Government will take the necessary steps to bring these provisions of the Decree into line with this Article, and requests it to provide information on the measures taken to improve customs employees' working conditions as regards hygiene.***

5. *Part IV of the report form. Application of the Convention in practice.* ***The Committee would be grateful if the Government would provide information on the practical effect given to the Convention (extracts of inspection reports, statistics, if any, on the number of workers covered by the legislation applying the Convention).***

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1981)**

1. The Committee notes the information provided by the Government in its report. It notes in particular that the Government has provided a copy of the Regulations respecting the registration and monitoring of toxic products or substances and hazardous substances, products or materials, which give effect to *Article 12 of the Convention*. It also notes the observations provided in October 2006 by the Public and Private Enterprise Workers' Union (SITEPP) which refer, among other matters, to occupational health issues.

2. With reference to the observations made earlier by the Association of Customs Officials (ASEPA) in relation to the application of this Convention, the Committee notes the Government's reference to the information provided in the report on Convention No. 120 and observes that once again the Government has not provided a reply to its request for the

necessary information. The Committee recalls that it noted the Government's indications relating to both national and international provisions respecting conditions of work, including several provisions of this Convention. On that occasion, the Committee requested the Government to provide information on the measures adopted to prevent and limit occupational hazards due to air pollution and noise with a view to protecting persons working as customs handlers and customs operations technicians, who may be exposed to dust, humidity, noise and toxic gases in the workplace. **The Committee is bound to renew its request for information and hopes that the Government will adopt the measures specified and will provide information on the results achieved in this respect.**

3. *Article 8, paragraphs 1 and 3, and Article 9 of the Convention. Establishment and regular revision in the light of current national and international knowledge and data of criteria for determining the hazards of exposure to air pollution, noise and vibration in the working environment.* The Committee notes the Government's indication in its latest report that the exposure limits for air pollution which have been determined are based on the criteria adopted by the American Conference of Governmental Industrial Hygienists. The Committee observes the Government's indication that the limits are revised annually by the national authorities in accordance with the publications of the above organization. **The Committee requests the Government to describe the process of revising the exposure limits to air pollution, as well as to noise and vibration.**

4. *Article 11, paragraphs 1 and 3. Medical examinations.* The Government indicates in its latest report that, through the Ministry of Labour and Social Security, a request has been made to the Occupational Health Council for the necessary studies to be undertaken to comply with the comments of the Committee and that the Government will be in a position to provide a satisfactory reply in the near future. **The Committee hopes that the studies concerned will be undertaken without delay and that the necessary measures will be adopted to give effect to these provisions of the Convention.**

5. The Committee notes the information on violations of labour laws identified at the national level in the year 2000. **It would be grateful if the Government would continue to provide updated information on the application of the Convention in practice (extracts from the reports of the inspection services and statistics, where they are available, on the number of workers covered by the legislation giving effect to the Convention).**

6. The Committee notes the observations made in October 2006 by the SITEPP which refer, among other matters, to occupational health issues, and particularly air pollution in the workplace. **The Committee requests the Government to provide information in reply to the above observations.**

[The Government is asked to reply in detail to the present comments in 2008.]

## Croatia

### **Asbestos Convention, 1986 (No. 162) (ratification: 1991)**

1. The Committee recalls the grave concerns it expressed in its observation in 2005 regarding the application of the Convention in Croatia and, in particular, the situation at the Salonit-Vranjic factory site. It also recalls the discussion that took place at the Conference Committee in June 2006 and that the Conference Committee, in its conclusions, invited the Government to accept, as a matter of urgency, a high-level direct contacts mission with a view to verifying the situation "in situ" and to follow up on this case. The Committee notes that the Government accepted this invitation.

2. The Committee is in receipt of the report of the high-level direct contacts mission (the mission) undertaken by the Office from 2 to 6 April 2007 in Croatia as a follow-up to the conclusions of the Conference Committee in June 2006. It notes that the purpose of the mission was to review the national situation regarding activities involving exposure of workers to asbestos in the course of work; to seek information regarding past and present exposure of workers to asbestos at the Salonit-Vranjic factory site and on past and present pollution of the general environment by asbestos released therefrom; and to review the measures taken and envisaged in both law and practice for an effective application of the Convention including, in particular, the measures taken to consult with the social partners on such measures.

3. In addition to the reports submitted by the Government in 2006 and the communications submitted by the Association of the Workers Affected by Asbestosis, Vranjic (the Association), the Committee has examined the report of the mission, the numerous written documents and other material made available to the mission by the Government and government officials, organizations representing workers occupationally exposed to asbestos, in particular at the Salonit-Vranjic factory and the Association, as well as the conclusions of the mission.

4. The Committee welcomes the fact that the mission could be efficiently carried out in full cooperation with the Government and all relevant line ministries, in particular the Ministry of Economy, Labour and Entrepreneurship (MELE) and the social partners, and that arrangements were made to facilitate the meetings between the members of the mission and other relevant stakeholders including, in particular, workers occupationally exposed to asbestos, inter alia, at the Salonit-Vranjic factory site.

5. The Committee notes that, according to statements made in the context of the mission, the Government's ambition is to ensure the full application of Convention No. 162, as well as to align Croatia's legislation with the requirements of the *acquis communautaire*. The Government recognizes that there is a need to review the provisions on health protection, employment and social protection, and to build institutional and other capacities to be able to do so. The

Government also shares the view that it is urgent to find a solution to the problems of the Salonit-Vranjic workers, in particular with regard to pension rights and the resolution of their claims for compensation, including a mechanism to provide funds for the settlement of those claims, as Salonit-Vranjic has gone bankrupt, and that the claims of the workers at the factory would have to be paid from the state budget, as Salonit-Vranjic had formerly been a state-owned company. The Committee also notes the Government's statement that, while its aim is to obtain the best possible pensions for all the workers and not only those suffering from asbestos-related diseases, any such solutions depend on clearance from the Ministry of Finance. Against this background, the Committee particularly welcomes MELE's undertaking at the conclusion of the mission, to consider whether current financial decisions could be reconsidered so as to make financial provision for the resolution of these issues, and that MELE invited the other ministries concerned to do the same. The Committee also welcomes the undertaking by MELE to give further consideration to a possible partial solution to this urgent and serious problem.

6. The Committee deeply regrets, however, that it is not in a position to verify whether these intentions have been translated into concrete action and to carry out a detailed examination of the issues raised in its 2005 observation as the Government has not, as requested, submitted any report to the ILO on the action taken by it since the mission. ***Against this background, the Committee strongly urges the Government to make immediate efforts to take the actions and measures detailed in the conclusions of the mission, and to give top priority to resolving the cases of workers suffering from asbestosis and other related diseases. It is imperative to allocate the necessary personnel and financial resources so that the various measures can be effectively implemented. The conclusions of the mission, in their relevant parts, are reproduced below.***

*Legislative provisions pending*

The mission was informed that the following legislative provisions concerning the diagnostic, medical care and reimbursement claims of those suffering from diseases caused by asbestos were pending and had not yet been submitted to the Croatian ECOSOC and Parliament:

- (a) *Draft Law on mandatory health-care oversight of workers professionally exposed to asbestos.* This draft legislation proposes a methodology for follow-up on the medical status of workers exposed to asbestos, a board for follow-up of these cases and another board responsible for the implementation of the diagnostic procedure.
- (b) *Draft Rules on health-care oversight of workers professionally exposed to asbestos and the diagnostic criteria for determining a list of professional diseases caused by asbestos* (important issue of concern: the criteria used for diagnosis).
- (c) *Draft Law on reimbursement of the insurance claims of workers professionally exposed to asbestos.* This draft Law will regulate the recognition of claims by workers for diseases caused by asbestos, the procedure to be followed and the body responsible for administering claims. The draft Law will also provide for an alternative dispute settlement mechanism that will be more expeditious and will allow for out-of-court settlement in respect of claims filed by workers occupationally exposed to asbestos.
- (d) *Draft Law on conditions for acquiring the right to an old-age pension for employees who are professionally exposed to asbestos.* This draft sets out special conditions for acquiring an old age pension in the case of workers who have been exposed to or who have become ill from asbestos and whose employment has been terminated due to redundancies or as a result of the closure of the business due to the ban on asbestos.
- (e) *Draft Regulation on the manner and procedures for managing waste containing asbestos.*

*Legislative measures*

The mission was informed that the above five proposed legislative measures were pending due to budgetary constraints or were awaiting budgetary analysis. The mission noted that the legislative approach taken is fragmented, instead of being a single integrated legislative framework. This might make it difficult for the workers concerned to know and understand each of these legislative texts. However, the mission was aware that these various texts have been under discussion for some time. The mission proposed that the legislative texts should include provisions on sanctions to enhance enforcement and should also contain expedited and affordable appeal procedures.

The mission considered that the various legislative measures were long overdue and that it was now urgent to take them forward based on tripartite consultation and that they should be submitted to Parliament without delay. Failure to implement these measures would fall short of full compliance with Convention No. 162 by Croatia and leave unprotected the workers who have been exposed to asbestos, many of whom have already died, are dying or ill. The five pending legislative provisions have been discussed and promised for a long time and they can no longer be delayed. These measures need to be taken this year (2007) (they were promised last year). Justice delayed is justice denied.

*Institutional measures*

The mission met and discussed with all the relevant line ministries and they were all very forthcoming with information. The mission was also aware that working groups and coordination bodies have been set up in the past to take forward various legislative and practical measures. The mission remained, however, concerned by what continued to be major gaps in coordination, both within ministries and between them. This probably reflected competencies and institutional issues which needed to be addressed. Reporting of occupational diseases has been a major and important area where the consequences of this lack of clear lines of authority or reporting have had a major impact, particularly on the lives of individuals. It is now urgent that there be put in place clear and transparent criteria for diagnosing occupational diseases and clear lines of reporting of occupational diseases from the enterprise via the local and on to the national level. The absence of clarity in this area has had an irreparable impact on the reliability of data and statistics concerning persons affected by asbestos-related diseases. The mission did not meet the Ministry of Finance, a key ministry for taking forward almost all of these measures which could avoid or reduce the delay currently being experienced. The mission, however, also understood that it is also an issue of priority for each of the line ministries concerned in the allocation of their own resources.

*Urgent measures for workers affected by asbestos at Salonit-Vranjic and Azbest*

The mission had the opportunity to visit the site of the Salonit-Vranjic factory and to benefit from a first-hand view of the current conditions prevailing, as well as information on the working methods and procedures of the factory when it was operational. The mission's assessment is that, in view of the working methods of the factory, there is no room for doubt that the workers of that factory have been exposed to asbestos and that their disease is occupational. Considering that the age group of many of the workers affected by asbestosis today is above 50 and most of them had worked for more than 25 years in plants producing asbestos products, that they are ill, that the companies they have worked for have been closed or gone bankrupt, that most of them have not been able to benefit from an invalidity pension under the applicable legislation, and that every day their health situation further deteriorates, it has become not only urgent but also imperative that action be taken without delay to ensure that these workers benefit from appropriate care and protection, as well as compensation. The mission urged the Government to take action without delay, particularly since the workers who currently benefit from contracts with the Environment Fund are expected to cease receiving further benefits at the end of April 2007. It is now urgent that the draft Law on conditions for acquiring the right to old-age pensions for employees who have been professionally exposed to asbestos are submitted to ECOSOC and subsequently to Parliament for adoption. The mission considered this to be the first action to be prioritized. An alternative would be the urgent adoption of a special decree providing for the specific situation of the workers concerned.

The mission also recommended that action be stepped up as a matter of urgency to decontaminate the premises and to rehabilitate them prior to their use for any other activity, so that workers who are employed in those premises can benefit from a safe and healthy working environment. The mission also emphasized the urgency in view of the asbestos waste stored on the site and its impact more generally on the environment and the community living in the area. This measure should also be applicable to all other sites where asbestos products have been produced and other waste disposal sites where asbestos products have been deposited.

#### *Judicial measures*

Paying due regard to the principle of the separation of powers and the independence of the judiciary as essential for the rule of law, it is nonetheless important that legal claims for asbestos-related diseases be heard expeditiously and judicial decisions handed down in a timely manner. The situation of these workers does not permit lengthy hearings. It is for this reason that the mission also recommended that the adoption of the draft Law on reimbursement of the insurance claims of workers professionally exposed to asbestos be prioritized.

#### *Preventive measures*

In more general terms, the mission also highlighted the importance of prevention and the need for a comprehensive safety and health prevention plan. The mission recommended the adoption of a national policy on OSH on the basis of the ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). More specifically, in the case of asbestos, an awareness-raising campaign should be launched targeting workers in sectors where asbestos products may be encountered, in particular, the construction, ship repair, ship scrapping and port sectors. The Office for Social Partnership should play a key role in this area, as well as in the adoption of the national policy on OSH. This would allow for the involvement of employers' and workers' organizations in promoting OSH.

#### *ILO action*

The International Labour Office remains ready and willing to continue to assist the Government to comply fully with Convention No. 162 and, more specifically, in implementing the various measures referred to above. It is willing to provide technical assistance concerning legislative reviews, training and capacity building for the tripartite constituents in the field of OSH and, in particular, as regards Convention No. 162. In the latter area, the training would cover criteria for determining occupational disease caused by asbestos in line with the most up to date ILO guidelines in the field. The ILO Office in Budapest would continue to be in close cooperation with the Government.

**7. *The Committee hopes that the Government will take the necessary measures to give effect to the recommendations made by the mission and to ensure full compliance with the Convention.***

[The Government is asked to supply full particulars to the Conference at its 97th Session and to reply in detail to the present comments in 2008.]

## **Democratic Republic of the Congo**

### ***Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1967)***

1. With reference to the examination of the case concerning the Democratic Republic of the Congo at the 96th Session of the International Labour Conference in 2007 in the absence of the Government representative, the Committee notes that the Government has not, since 2002, submitted any report on the application of the Convention. Based on information in publicly available sources, the Committee understands, however, that a new Labour Code was adopted on 16 October 2002 (Act No. 15/2002) and notes, with satisfaction, that section 173, paragraph 1 of the new Labour Code gives effect to *Article 2 of the Convention*.

2. *Article 2. Guarding of machinery being sold, hired, or otherwise transferred or exhibited.* The Committee notes that paragraph 2 of section 173 of the new Labour Code provides that further legislation providing for the modalities for implementing paragraph 1 of section 173 is to be developed. ***The Committee requests the Government to provide information on legislation giving further effect to Article 2 of the Convention, and to transmit to it copies of relevant legislative texts as soon as they have been adopted.***

3. *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 new Labour Code does not seem to give effect to these Articles of the Convention. ***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.***

4. *Part V of the report form. Practical application of the Convention. The Committee requests the Government 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 Government is asked to reply in detail to the present comments in 2008.]

## Djibouti

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1978)**

1. 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.*

2. 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.

3. *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.*

4. *Article 7, paragraphs 1(b) and 2. Exposure limits for young persons between 16 and 18 years of age; and 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.*

5. *Exceptional exposure of workers in situations of emergency.* With reference to its previous comments, the Committee again draws the Government's attention to paragraphs 16 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.*

[The Government is asked to report in detail in 2008.]

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1978)**

1. 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.

2. *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.***

## France

### French Polynesia

#### **Radiation Protection Convention, 1960 (No. 115)**

1. The Committee notes the Government's report including the brief reply to its comments to the effect that the Interministerial Committee on Radiations has not yet been set up, nor has a medical inspector been appointed. The Government indicates, however, that the appointment should take place by the end of 2007. ***The Committee accordingly urges the Government once again to pursue its efforts, in the context of interministerial committees, to appoint a medical inspector and to inform the Committee of the results of these efforts including any progress made.***

2. With reference to its comments of last year on better protection against ionizing radiations and particularly the medical follow-up of workers throughout their career and beyond, which were matters raised by the social partners, the Committee notes with regret that there has been no significant progress on these issues. ***It accordingly reiterates its request to the Government to indicate the measures taken or envisaged to act on the questions raised by the social partners.***

3. With reference to its previous comments, the Committee notes, again with regret, that the provisions of the Decree of 31 March 2003, which apply in metropolitan France, have not been adapted for French Polynesia and that there has been no change in the situation since its last comments. ***It is therefore bound to reiterate its comments, which read as follows:***

1. In its previous comments, the Committee noted Deliberation No. 91-019 AT of 17 January 1991 adopted pursuant to Act No. 86-845 of 17 July 1986, establishing specific measures for the protection of workers against the danger resulting from external exposure to ionizing radiations.

2. The Committee noted that the dose limits set forth in section 5 of the Deliberation do not correspond to the revised dose limits set forth in the 1990 Recommendations of the International Commission on Radiological Protection (ICRP). Referring to *Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention*, the Committee requested the Government to report on the steps taken or envisaged in the light of current knowledge to amend the dose limits for occupational exposure to ionizing radiations and to ensure effective protection of pregnant women.

3. The Committee also noted that, under section 3 of the Deliberation, exposed workers are defined as those who because of their work may be exposed to annual doses of ionizing radiations greater than one-tenth of the annual limit set for workers. With reference to *Article 8* of the Convention, which calls for maximum permissible dose levels to be fixed for workers not directly engaged in radiation work, but who remain or pass where they may be exposed to ionizing radiations or radioactive substances, the Committee requested the Government to indicate the steps taken or envisaged to ensure that non-radiation workers are not exposed to doses of radiation greater than those set for the general public (i.e. 1 mSv per year).

4. The Committee further requested the Government to indicate the measures taken or envisaged to ensure the effective protection of workers against internal exposure to ionizing radiations in conformity with *Article 6*, which calls for dose limits to be set not only for external, but also for internal exposure.

5. The Committee notes the Government's information in its report that preparations have commenced, in consultation with employers' and workers' representatives, for a progressive revision of the labour legislation, including the provisions on protection against ionizing radiations, and that this process is expected to be finalized by the end of the first quarter of 1996. The Committee notes with interest the information that the revision will take into account the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) in relation to the matters raised in the Committee's previous comments. In particular, it notes with interest that the 1990 ICRP Recommendations will be incorporated with regard to maximum permissible dose limits of ionizing radiations from sources external to the body for all workers who are directly engaged in radiation work and for pregnant women (*Articles 3 and 6*), for workers not directly engaged in radiation work, but who remain or pass where they may be exposed to ionizing radiations or radioactive substances (*Article 8*), as well as the maximum permissible doses which may be taken into the body (*Article 6*) for workers directly engaged in radiation work. ***Also with reference to its 1992 general observation on the Convention, the Committee hopes that the Government will soon be in a position to supply information on the provisions adopted to give full effect to the Convention and which are in conformity with the 1990 Recommendations of the ICRP and the 1994 International Basic Safety Standards.***

6. *Emergency situations.* The Committee refers to the explanations provided in paragraphs 16 to 27 and 35(c) of its 1992 general observation on the Convention and to paragraphs 233 and 236 of the 1994 International Basic Safety Standards. ***The***

*Committee hopes that the Government will provide information on the measures taken or contemplated in relation to emergency situations.*

7. *Provision of alternative employment. With reference to paragraphs 28 to 34 and 35(d) of its 1992 general observation on the Convention and the principles set out in paragraphs 96 and 238 of the 1994 International Basic Safety Standards, the Committee requests the Government to provide information on the measures taken or contemplated to ensure effective protection of workers who have received accumulated exposure beyond which they would run an unacceptable risk and who may thus be faced with the dilemma of having to choose between protecting their health or losing their job.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Guadeloupe

### **Radiation Protection Convention, 1960 (No. 115)**

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 invites the Government to refer to the comments made in 2006 in its observation concerning the application of Convention No. 115 by French Polynesia.*

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

## New Caledonia

### **Maximum Weight Convention, 1967 (No. 127)**

1. The Committee notes the information provided by the Government in its latest report according to which a Labour Code should be examined by the Congress of New Caledonia before the end of the first half of 2007. The report also indicates that a working paper is ready and a delegation of the State Council visited Nouméa in March 2007 on a technical mission to finalize the preliminary draft text. The Government's report adds that a compilation of occupational safety and health texts for professionals has been prepared and its dissemination should coincide with that of the new Labour Code. Furthermore, the report indicates that the transposition of the European Union Framework Directive on Prevention and Safety is being carried out in 2007 and that this text will serve, among other objectives, to generalize in New Caledonia the concept of risk evaluation in enterprises and that the issue of the manual handling of loads forms part of the reflection that enterprises will have to carry out in the context of their risk evaluation. The Committee further notes the information provided by the Government on the effect given in practice to the provisions respecting the maximum weight of loads, on the use of modern technical means for the handling of loads and on vocational training. While noting that these developments are promising, the Committee observes that the regulations on maximum weight have not changed since its last comment. ***It is accordingly once again bound to reiterate its comments on the following points:***

1. The Committee notes that the provisions of the Labour Code of 1926, and particularly sections R.231-72, establish limits in the merchant marine sector for loads for which the manual transport is inevitable. The Committee also notes the Government's announcement that a draft order prepared by the medical labour inspector will be submitted to the Government with a view to improving the regulations in force along the lines indicated by the Committee. In this respect, the Committee notes that the only regulation currently in force concerning the manual transport of loads by workers is Order No. 1211-T of 19 March 1993, which gives effect to section 5 of Order No. 34/CP of 23 February 1989, which itself only establishes minimum safety and health requirements for the manual transport of loads which constitute a risk for workers, and particularly to their backs and lumbar regions. The Committee recalls that, in its previous comment, it noted the information provided by the Government, and particularly the findings of a survey of occupational physicians.

2. *Articles 3 and 7 of the Convention.* The Committee noted the finding of this survey that in general heavy loads are only handled occasionally, except in the case of certain activities, and particularly removals and the unloading of containers loaded with imported products. Furthermore, in practice, the average weight of loads is lower than 55 kg, except in the case of the lifting of sick persons and their transport on stretchers. With regard to the criteria applied by occupational physicians to conclude that a worker is fit for the manual transport of loads over 55 kg, account is taken of Order No. 1211-T of 19 March 1993 giving effect to section 5 of Order No. 34/CP of 23 February 1989 respecting minimum safety and health requirements for the manual transport of loads which constitute a risk for workers, and particularly to their backs and lumbar regions. In this respect, the Committee noted that section 3 above remained unchanged. The absolute limit for *occasional* lifting is set at 105 kg, and a worker may be regularly authorized to carry loads of over 55 kg if he has been found fit by the occupational physician. While noting the findings of the above survey, the Committee therefore requested the Government to indicate the measures which had been taken or were envisaged to ensure that workers could not be required to engage in the manual transport of a loads heavier than 55 kg. Once again, the Committee referred to the ILO publication *Maximum weight in lifting and carrying* (Occupational Safety and Health Series, No. 59, Geneva, 1988), in which it is indicated that 55 kg is the limit recommended from the ergonomic point of view for the admissible weight of loads to be transported *occasionally* by a male worker between 19 and 45 years of age. Similarly, it states that 15 kg is the limit recommended from an ergonomic point of view for the admissible weight of loads to be transported *occasionally* by adult women. ***The Committee emphasizes that it has been raising this matter for many years. It therefore hopes that the Government will take the necessary measures to give effect to the provisions of the Convention.***

3. *Articles 4 and 6.* The Committee previously noted the technical devices (trolleys, lifts, fixed or travelling cranes) used by workers depending on the financial means of the enterprise to limit or facilitate the manual transport of loads. ***The Committee requests the Government to continue providing information on the application of this Article in practice.***

4. *Part V of the report form.* The Committee notes the information provided concerning occupational accidents. The Committee requests the Government to continue providing information on the effect given in practice to the provisions respecting

the maximum weight of loads which may be transported manually and, in particular, on the action taken to prevent this type of occupational accident. *The Committee hopes that the Government will take the necessary measures, as soon as possible, for the adoption of the above draft order and to ensure that this text reflects the points raised by the Committee in its comments and provides effective protection for workers called upon to lift and transport loads manually.*

2. The Committee requests the Government to provide any new legislative text as soon as it is adopted.

[The Government is asked to reply in detail to the present comments in 2008.]

## Ghana

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1961)**

1. The Committee notes the information provided by the Government in its most recent report including replies to the Committee's previous comments. It requests the Government to provide the following additional information.

2. *The application of all Articles of the Convention.* With reference to the Government's report submitted in 2006, the Committee had noted that the Government indicated that the radiation protection and safety guides were nonbinding documents. The Committee notes, however, that in this year's report the Government seems to indicate that these guides would be legally binding and adopted with a view to ensuring the application of the Convention. In terms of relevant legislation, the Committee also notes that the Government indicated that Act No. 204 of 1963 would have been abrogated by the Atomic Energy Act No. 588 of 2000. As the Government has not provided the Committee with a copy of this recent Act, it has not been in a position to verify whether the Regulation No. 1559 of 1993, regulating, inter alia, the control and use of sources of ionizing radiation and exposure of persons to ionizing radiation, adopted in implementation of the abrogated Act, would still be in force or not. The Committee also notes that the Government indicates that according to the new Labour Code of 2003 the Ministry of Labour would be entitled to adopt regulations providing for specific measures to be taken by employers to safeguard the health and safety of workers employed by them, but that this has not yet been done. *In view of the foregoing, and with reference to the general observation of 1992 on the application of this Convention, the Committee requests the Government to take all relevant measures to ensure the full application of this Convention, in law and in practice. The Government is also requested to clarify the legal status of the radiation protection and safety guides and whether Regulation No. 1559 of 1993 is still in force. The Government is invited to take due account of the recommendations concerning maximum dose limits for exposure to ionizing radiation adopted in 1990 by the International Commission on Radiological Protection (ICRP) and is finally requested to submit copies of all relevant legislative texts to the Committee.*

3. *Part V 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, supplying, for example, statistical information on the number of workers covered by the measures giving effect to the Convention, extracts from reports of the inspection services and information concerning the number and nature of contraventions reported and the action taken on them, etc.*

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1965)**

1. The Committee notes with regret that the Government's reports received in 2006 and 2007 do not contain any new information or any reply to its previous comments.

2. *Articles 1 and 17 of the Convention. Scope of application.* The Committee reminds the Government that, for more than 30 years, it 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 Government is asked to report in detail in 2008.]

## Guinea

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1966)**

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

1. 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.***

2. *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.***

3. *Situations of exposure in emergencies: 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 paragraphs 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 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.***

## **Iraq**

### **White Lead (Painting) Convention, 1921 (No. 13) (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 7 of the Convention.* The Committee notes the Government's indication to the effect that it does not dispose of any statistics concerning the lead poisoning among working painters for the period ending 30 June 1999. For a number of years, the Committee has been recalling to the Government that *Article 7* of the Convention requires the establishment of statistics on lead poisoning among working painters. In this respect, the Committee once again refers to section 8(a) of the Instructions for the Prevention of Lead Poisoning among Painting Workers, according to which cases of lead poisoning shall be reported and statistics kept. The Committee notes the Government's indication that cases of lead poisoning must be notified to the Labour Inspectorate, and the Ministry of Health is the competent authority responsible for keeping statistics concerning the morbidity and the mortality of working painters due to lead poisoning. ***The Committee, taking note of this information supplied by the Government in its report, requests the Government to indicate the measures taken or envisaged to establish statistics on lead poisoning of working painters, as required under section 8(a) of the Instructions for the Prevention of Lead Poisoning among Painting Workers.***

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

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1962)**

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

1. *Articles 3, 4, 5, 6, 7 and 8 of the Convention.* The Committee had noted in previous comments that the provisions found in Act No. 99 of 1980 concerning protection against ionizing radiations does not specify detailed measures necessary for the application of the Convention, but does provide for instructions to be established ensuring implementation of the Act. With regard to the issuing authorities, section 10 of the above Act empowers the Radiation Protection Board to issue these instructions concerning measures to be taken to prevent accidents. In this context, the Committee notes the Government's indication that the authority responsible for radiation protection has issued circulars indicating the limits of safe exposure to radiation, in application of section 8 of Act No. 99, 1980, proving for the responsibility of the Radiation Protection Board to set maximum dose limits permissible for exposure to ionizing radiations. **The Committee requests the Government to supply a copy of these circulars for further examination to enable the Committee to determine whether the limits prescribed in these circulars cover the different categories of workers, in accordance with Articles 7 and 8 of the Convention.**

2. As concerns protective measures to be taken when exposed to radiation, the Committee had noted in previous comments that section 8 of Act No. 99, 1980, obliges the Radiation Protection Board to issue, inter alia, the necessary instructions in this regard. **The Government accordingly is requested to indicate the steps taken or being considered in this regard to ensure effective protection of workers against ionizing radiations and to restrict the exposure of workers to the lowest practicable level avoiding any unnecessary exposure, as prescribed under Article 3, paragraph 1, Article 5 and Article 6, paragraph 2, of the Convention.**

3. *Article 9.* The Committee notes the Government's indication to the effect that this Article of the Convention is applied on the basis of instructions and Recommendations issued by the Radiation Protection Centre. However, there are no legal texts specifically covering this matter. In this respect, the Committee notes again section 107 of the Labour Code providing for the employer's obligation to inform workers in writing, prior to their assignment, of the occupational hazards involved in the work in question and the protective measures to be taken. By virtue of this section, the employer must also post instructions concerning occupational dangers and the protective measures to be taken, in accordance with instructions drawn up by the Minister of Labour and Social Affairs. **The Committee asks the Government to enlighten the character of the instructions and Recommendations issued by the Radiation Protection Centre, particularly with a view to their impact and their possible binding effect, although they do not constitute legal texts. The Government is also requested to provide copies of the above instructions and recommendations for further examination.**

4. *Article 11.* The Committee notes the Government's indication that section 11 of Act No. 99, 1980, concerning inspection, and section 12, specifying the obligations of the owner of an ionizing radiation source, cover the matters dealt with in this Article of the Convention. The Committee therefore points out that *Article 11* of the Convention calls for appropriate monitoring of workers and places of work to evaluate the exposure of workers to ionizing radiations and radioactive substances, with a view to ascertain that the levels of exposure fixed by the competent authority are observed. The Committee ventures to call the Government's attention to Paragraphs 17 to 19 of the Radiation Protection Recommendation, 1960 (No. 114), which propose a number of measures to be taken in this connection. **The Government is requested to indicate the measures taken or envisaged in order to ensure that both workers and places of work are appropriately monitored in order to determine whether the dose limits fixed are respected.**

5. *Articles 12 and 13(a).* Further to its previous comments, the Committee notes again section 12, subsection 5 of Act No. 99, 1980, providing that owners of a source emitting ionizing radiations shall submit exposed workers to preliminary and periodic medical examinations in conformity with the instructions. In its report for 1986, the Government had indicated that instructions had been established providing for pre-employment and periodic medical examinations. The Committee notes with regret that the Government did not transmit yet a copy of these instructions. **The Government is once again requested to supply a copy of these instructions in order to enable the Committee to examine the type and nature of the examinations required as well as the circumstances in which, because of the nature or degree of exposure or both, workers shall undergo appropriate medical examinations.**

6. With reference to its previous comments, the Committee recalls that, under *Article 2, paragraph 1*, of this Convention applies to all activities involving exposure of workers to ionizing radiations in the course of their work. In the direct requests the Committee has addressed to the Government since 1982, it had noted that Act No. 99, 1980, under the terms of section 2, only applies to the use of radiation sources for peaceful purposes. The Government had indicated in its report for 1986 that a permanent central committee had been established to examine cases of radiation exposure on a regular basis. It further indicated that workers engaged in research were covered by Act No. 99. Section IV of Instructions No. 1 issued by the Radiation Protection Board provides that the Centre for Radiation Protection will examine each case where persons not covered by Act No. 99 present a request to the Radiation Protection Board. The Centre will transmit its recommendations in this regard to the Board, which shall then make an appropriate decision. **The Government is again requested to indicate the manner in which the provisions of this Convention are applied to activities not covered by Act No. 99, in particular, in respect of defence work involving exposure to ionizing radiations. Furthermore, the Government is again requested to provide additional information on the composition and competence of the Centre for Radiation Protection, as well as its duties, responsibilities and enforcement powers.**

7. Finally, the Committee once again draws the Government's attention to paragraphs 16 to 27 and 35(c) of its 1992 general observation under this Convention concerning occupational exposure during and after an emergency. **The Government is again requested to indicate whether, in emergency situations, exceptions are permitted to the normally tolerated dose limits prescribed for exposure to ionizing radiations and, if so, to indicate the exceptional levels of exposure allowed in such circumstances and to specify the manner in which these circumstances are defined.**

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

## Italy

### **Benzene Convention, 1971 (No. 136) (ratification: 1981)**

The Committee notes the information provided by the Government in its report, including a reply to its previous comments. It notes the information that *Article 11, paragraph 1, of the Convention* is applied by section 7 of Legislative Decree No. 151/2001 prohibiting the employment of breastfeeding women in work involving exposure to benzene. With reference to the question raised by the Committee regarding the time limit provided for in this provision, the Committee

notes with satisfaction that the Government indicates that, pursuant to implementing legislation to the new law as finally approved by Parliament on 1 August 2007, breastfeeding mothers are now protected during the whole breastfeeding period. ***The Committee requests the Government to keep it informed of all relevant developments in this area and to transmit to it copies of all relevant legislative texts.***

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1981)**

1. The Committee notes the information in the Government's most recent report including its response to the Committee's previous comments. The Committee notes with interest the information that the Government intends to give increased attention to accidents at work and that through the recently adopted Law concerning the reorganization and reform of standards on health and safety (Act No. 123 of 3 August 2007), the Government has received delegated authority to reorganize and reform the standards on occupational safety and health, to improve the cooperation between and vigilance exerted by the different national authorities supervising compliance with national legislation on occupational safety and health. ***The Committee requests the Government to keep it informed on all measures taken to implement this national reform in the area of occupational safety and health, including on specific actions taken to improve the application of the present Convention.***

2. *Article 1, paragraphs 1–3 of the Convention. Prohibited substances or substances subject to authorization.* The Committee notes the information submitted by the Government on the adoption of Legislative Decree No. 257 of 25 July 2006 (OG, No. 211 of 11 September 2006) concerning cessation of the use of asbestos. The Committee notes, inter alia, that the maximum exposure limit for all types of asbestos has now been lowered to the EU standard (see Directive 2003/18/CE regarding exposure of workers to the risks arising from asbestos) of 0.1 fibres per cubic centimetre of air measured as a time-weighted average over eight hours, and that any demolition activity and removal of asbestos can only be carried out by recognized entities qualified to carry out such work. ***The Committee requests the Government to continue to provide information on the practical application of these provisions of the Convention, including on progress made concerning the implementation of Legislative Decree No. 257 of 25 July 2006 concerning cessation of the use of asbestos.***

3. *Article 3. Preventive measures and record keeping.* In response to its previous comments, including the observations made by the Italian General Confederation of Workers (CGIL), Italian Confederation of Trade Unions (CISL) and Union of Italian Workers (UIL) that relevant legislative provisions calling for the establishment of an appropriate system of records have not been effectively implemented in practice, the Committee welcomes the information that the Government has initiated work, inter alia, with the assistance of the Higher Institute for Occupational Safety and Health (ISPESL), for the realization of an information system capable of determining carcinogenic situations at work, as provided for in section 71 of Legislative Decree No. 626/94 on job security (as amended). ***Against this background, the Committee requests the Government to continue to report on the application of this provision of the Convention, including on progress as regards the initiative to reform its system for keeping records.***

4. *Article 5. Alternative employment.* With reference to its previous comments, the Committee notes that the Government's report does not provide any additional information in this respect. ***The Committee therefore reiterates its request to the Government to provide additional information on the application in practice of this Article of the Convention.***

5. *Part IV of the report form and Article 6(c).* With reference to its previous comments, the Committee notes the updated information on exposure data and documented estimates of the number of exposed workers by country, carcinogen, and industry based on the carcinogen exposure (CAREX) database. The Committee notes that for the period 2000–03, the CAREX report submitted includes data on 85 CAREX agents reassessed, taking into account changes in exposure patterns and in numbers of employees by industrial class. According to this CAREX report, out of 21.8 million employees in Italy (broken down as 19.4 in industry and services, and 2.4 in agriculture), 4.2 million (or slightly less than 20 per cent of the workforce) were exposed to the agents included in the study. Prevalence of exposure was highest for environmental (passive) tobacco smoke (800,000 exposures); solar radiation (700,000); diesel engine exhaust (500,000); wood dust (280,000); silica (250,000); lead and inorganic lead compounds (230,000); benzene (180,000); hexavalent chromium compounds (160,000); glass wool (140,000); and PAHs (polycyclic aromatic hydrocarbons) (120,000). According to this updated study the ten most common exposures remain “the same as those already identified in CAREX”, with the “relevant exception of asbestos”. The Committee notes that former and current CAREX estimates indicate that asbestos exposure would have decreased with approximately 80 per cent from 352,691 exposures to 76,100. ***While noting this updated and informative study, the Committee again requests the Government to provide further and more recent information on the manner in which the Convention is applied in Italy, based on extracts from labour inspection reports and, if such statistics are available, the number of workers covered by the legislation, disaggregated by gender if possible, or other measures which give effect to the Convention, the number and nature of contraventions reported, the number, nature and cause of the diseases, etc.***

## Kazakhstan

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1996)**

1. The Committee notes due information provided by the Government in its report.

2. *Article 11, paragraph 4, of the Convention. No adverse effect on the social security rights of workers.* With reference to its previous comments and the observations by the Air Crew Trade Union of Alma Ata submitted in 1998, the Committee notes the general information provided by the Government concerning the provisions in the Civil Code on obligations arising as a result of injury, and the Act concerning compulsory civil liability insurance for employers from harm to the life and health of workers and that this information does not address the specific situation of the 80 members of staff of the Kazakhstan civil aviation that allegedly suffered occupational illness and became disabled as a result of excessive exposure to noise and vibration in their work. *With reference to the observations made by the Air Crew Trade Union of Alma Ata, submitted already some time ago, and its previous comments, the Committee urges the Government to take any appropriate action and to provide full particulars regarding the rights of the workers involved under social security or social insurance legislation that may have been adversely affected in this regard.*

The Committee is addressing a request on other matters directly to the Government.

[The Government is asked to reply in detail to the present comments in 2008.]

## 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 hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

1. *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.*

2. *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.*

3. *Article 12. The Committee asks the Government to provide a copy of the Regulations on state medical supervision referred to in its report.*

4. *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.*

## Lebanon

### **Maximum Weight Convention, 1967 (No. 127) (ratification: 1977)**

The Committee notes the information contained in the Government's report and the adoption of Decree No. 11802 of 30 January 2004 organizing prevention and occupational safety and health in all workplaces covered by the Labour Code, including Schedule No. 3 on the maximum weight of loads which may be carried, pushed or pulled by women and young workers. The Committee notes with satisfaction that Decree No. 11802 referred to above gives effect to *Articles 3, 4, 6 and 7 of the Convention.*

The Committee is addressing a request directly to the Government on certain points.

## Paraguay

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1967)**

1. The Committee notes the information in the Government's latest report. As it contains very little new information in reply to the Committee's previous comments, the Committee is once again required to draw the Government's attention to the following points.

2. *Article 2, paragraphs 1 and 2, and Articles 4 and 15 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 and penalties.* With reference to its previous comments, the Committee notes the information provided by the Government that enterprises that use machinery and/or equipment without protection are penalized. It also notes once again that ILO

assistance has been requested in 2006 for a revision of the provisions that are in force respecting occupational safety and health to regulate and discuss on a tripartite basis matters relating to *Articles 4 and 15* of the Convention. The Committee hopes that, following revision, the national legislation will contain provisions explicitly prohibiting the sale, hire, transfer in any other manner and exhibition of machinery of which the dangerous parts are without appropriate guards, providing that the obligation to ensure compliance with this prohibition shall rest on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor and their respective agents, and establishing penalties to give effect to the provisions of the Convention. ***The Committee requests the Government to provide a copy of the revised text once it has been adopted.***

3. *Part V of the report form. Application of the Convention in practice.* The Committee notes the inspections carried out in the enterprise Aceros del Paraguay-Acepar S.A. pursuant to Inspection Order No. 79/07 and in the enterprise Achon Industrial pursuant to Inspection Order No. 80/07. ***The Committee requests the Government to provide more ample information regarding the application in practice of the present Convention including statistical data on labour inspections, the number and nature of the infringements reported, the number and nature and cause of the accidents occurring, etc.***

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1967)**

1. The Committee notes the information in the Government's latest report.

2. *Article 6, paragraph 1, and Part IV of the report form. Appropriate measures taken by the inspection service and the application of the Convention in practice.* The Committee notes that the Government provides virtually no new information in response to its previous comment. ***The Committee must therefore reiterate its request to the Government to provide information in its next report on the manner in which effect is given in practice to the provision of the Convention including information on the employed persons covered by the relevant legislation and the number and nature of the infringements reported, as well as extracts from inspection reports to enable the Committee to assess the effectiveness of the supervision carried out.***

[The Government is asked to reply in detail to the present comments in 2008.]

## **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 indication contained in the Government's report that statistics are not available on cases of morbidity and mortality due to lead poisoning among working painters. The Government indicates that such statistics will be supplied to the Committee once they have been collected and compiled. The Committee wishes to remind the Government that it has been requesting it to provide these statistics since 1988. ***The Committee is bound once again to express the firm hope that the Government will provide statistical data in the very near future, in accordance with Article 7 of the Convention.***

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

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (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:

1. The Committee notes that the procedure for the adoption of a new draft decree establishing the general hygiene and safety measures for establishments of all types is still ongoing. The Government indicates that the text of this decree will be sent to the Committee as soon as it has been formally adopted. ***The Committee requests the Government to provide a copy of the decision once it is adopted.***

2. *Articles 14 and 18 of the Convention. Seats for all workers and protection against noise and vibrations.* As in its previous comments, the Committee notes with concern that the legislative process begun in 1992 has never been completed. ***The Committee hopes, once again, that the procedure for the adoption of the decree in question will be completed in the very near future so as to give effect to the provisions of Articles 14 and 18 of the Convention.***

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

## **Tunisia**

### **Maximum Weight Convention, 1967 (No. 127) (ratification: 1970)**

*Articles 3 and 7 of the Convention. Maximum weight.* The Committee notes the information in the Government's report. It notes with satisfaction the adoption of the Order of 14 February 2007 issued by the Ministry of Social Affairs,

Solidarity and Tunisians Abroad, concerning workers engaged in the manual handling of loads, which gives full effect to the provisions of *Articles 3 and 7* of the Convention. The new Order lowers the maximum weight of loads transported manually by adult male workers from 100 kilos to 55 kilos (section 5 of the Order) and the weight of loads transported manually by women workers of 18 years and over from 25 kilos to 15 kilos (section 6(1) of the Order).

## Uganda

### **Asbestos Convention, 1986 (No. 162) (ratification: 1990)**

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:

1. *Article 3, paragraph 1, of the Convention. National laws or regulations on asbestos.* The Committee notes the Government's indication that the Factories Act is being modified to become the draft Occupational Safety and Health Bill, which is yet to be passed by Cabinet. Although the draft Occupational Safety and Health Bill does not contain specific provisions on asbestos, it covers all hazardous materials. In this regard and further to its previous comments, the Committee recalls that *Article 3, paragraph 1*, of the Convention, calls for the adoption of specific legislation prescribing measures to be taken for the prevention and control of, and protection against, health hazards due to occupational exposure to asbestos. Due to the time elapsed since the ratification of the Convention, the Committee hopes that the Government will take the necessary measures, in consultation with the most representative organizations of employers and workers concerned, in accordance with *Article 4*, of the Convention, to proceed to the adoption of laws or regulations ensuring effective application of the Convention. ***The Committee hopes that the next report of the Government will indicate the progress accomplished in this respect.***

2. *Part V of the report form. Practical application.* The Committee notes the Government's indication that many steps still need to be taken to incorporate the provisions of the Convention into both national law and practice. ***In this regard, the Committee reminds the Government of the possibility to request technical assistance from the Office to overcome the existing obstacles.***

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

## Ukraine

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1970)**

The Committee notes the information in the Government's brief report including reference to national regulations implementing a series of regulations of the United Nations Economic Commission for Europe related to wheeled vehicles, that all vehicles manufactured by domestic enterprises met with the requirements of the Convention and that Ukraine was taking steps to ensure that machinery was properly guarded. The Committee notes, however, that the Government's report contains no reply to its previous comments, including, inter alia, a request for a reply to observations from the Federation of Trade Unions of Ukraine (FTUU). It must therefore repeat its previous observation, which read as follows:

1. The Committee notes the information contained in the Government's report. It notes the adoption of Decree No. 209 of 27 September 2004, by the State Committee for Technical Regulation and Consumer Policy, and the implementation of Technical Regulations on Ensuring Conformity in the Safety of Machines and Mechanical Equipment No. 1339/9938 of 20 October 2004 by the Ministry of Justice. The Committee also notes the information that several other technical regulations and standards are in the process of being developed. ***The Committee requests the Government to provide with its next report copies of the legislation referred to above, as well as copies of any new legislation which may have been adopted and which is relevant for the application of the Convention.***

2. *Article 2, paragraphs 3 and 4, Articles 7 and 9, Article 10, paragraph 1, Article 11 and Article 15, paragraph 2, of the Convention.* The Committee notes that the Government is currently developing technical regulations and standards, in accordance with Decree No. 123-r of 4 March 2004 by the Cabinet of Ministers of Ukraine, and the Action Plan for drawing up national standards harmonized with International and European standards, for ensuring conformity (certification) of industrial production for 2004-11, as well as the information that 96 EN and ISO standards of a total of 551 have been adopted as national standards. The Committee hopes that the adopted standards will give effect to *Article 2, paragraphs 3 and 4, Articles 7 and 9, Article 10, paragraph 1, Article 11 and Article 15, paragraph 2*, of the Convention. ***It requests the Government to provide with its next report copies of the most relevant standards and regulations for the application of the Convention.***

3. *Part VI of the report form. Observations from the Federation of Trade Unions of Ukraine (FTUU).* The Committee refers to its previous observation where it requested the Government to send a reply on the observations made by the FTUU concerning the application of this Convention. The Committee notes that the Government's report is silent on this question and recalls that in its observations the FTUU stated that the requirements of the provisions of the Convention were reflected in the workers' protection laws and that they were generally respected but that, unfortunately, due to the difficult financial situation in the country, more than 800 machines, mechanisms and pieces of equipment currently used in certain enterprises were not in conformity with the technical safety requirements, mainly due to the absence of protective devices or features. Their use therefore constituted a potential danger to those working in these enterprises. ***The Committee would be grateful if the Government would respond to the observations by the FTUU.***

***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 reply in detail to the present comments in 2008.]

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 13** (*Afghanistan*); **Convention No. 45** (*Djibouti, Haiti, United Republic of Tanzania: Tanganyika*); **Convention No. 115** (*Belize, Turkey*); **Convention No. 119** (*Republic of Moldova, Niger, San Marino*); **Convention No. 120** (*Iraq*); **Convention No. 127** (*Lebanon*); **Convention No. 136** (*Guinea, Iraq, Lebanon*); **Convention No. 139** (*Afghanistan*); **Convention No. 148** (*Ghana, Guatemala, Guinea, Kazakhstan, Poland, San Marino*); **Convention No. 155** (*Belize*); **Convention No. 161** (*Bosnia and Herzegovina, Brazil, Poland, Slovakia*); **Convention No. 162** (*Chile*); **Convention No. 167** (*Iraq, Italy, Uruguay*); **Convention No. 174** (*Belgium, Zimbabwe*); **Convention No. 176** (*Botswana, Zambia*); **Convention No. 184** (*Sweden, Uruguay*).

## Social Security

### Algeria

#### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1962)**

The Committee notes that the report sent by the Government does not contain any replies to the points raised in its previous comments. Furthermore, the Committee regrets that the new schedules of occupational diseases established by the Interministerial Order of 5 May 1996 fixing the list of diseases presumed to be of occupational origin (*Journal Officiel* No. 16 of 23 March 1997) do not seem to take into consideration the comments which the Committee has been making for many years with a view to bringing national legislation fully into line with the Convention. ***The Committee therefore asks the Government, once again, to indicate in its next report the steps that it envisages taking to amend these schedules with regard to the following points:***

- (a) the list of the various pathological manifestations (appearing in the left-hand column of the various schedules) must be of an *indicative* nature;
- (b) the wording of the items concerning poisoning by *arsenic* (Schedules Nos 20 and 21), manifestations caused by the *halogen derivatives of hydrocarbons of the aliphatic series* (Schedules Nos 3, 11, 12, 26 and 27) and *poisoning by phosphorus* and certain of its compounds (Schedules Nos 5 and 34) must, in pursuance of the Convention, which is worded in general terms on these points, cover all manifestations that may be caused by the above substances;
- (c) the list of activities in which there is a risk of exposure to *anthrax infection* (Schedule No. 18) must include the "loading and unloading or transport of merchandise" *in general*.

### Angola

#### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1976)**

The Committee notes the Government's report referring to the adoption, during the period covered by the report, of Decree No. 53/05 of 15 August 2005 concerning industrial accidents and occupational diseases, which repeals the legislation previously governing workmen's compensation. The Committee also notes the information supplied by the National Union of Angolan Workers (UNTA) referring to points with regard to which it alleges the national legislation is unable to give effect to the provisions of the Convention. ***Since the Government has not forwarded any reply made to the abovementioned allegations, the Committee invites it to do so without delay so that it can evaluate all the elements in the file at its next session, at which it will also have a translation of the new legislation governing workmen's compensation.***

[The Government is asked to reply in detail to the present comments in 2008.]

#### **Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1976)**

The Committee notes the information supplied by the Government and also the comments made by the National Union of Angolan Workers (UNTA) concerning the manner in which the national legislation gives effect to the Convention. It notes with satisfaction the adoption of Decree No. 53/05 of 15 August 2005 concerning industrial accidents and occupational diseases, the appendix to which contains the new schedule of occupational diseases recognized in the country. Under the terms of the latter, diseases provoked by chemicals such as lead, its alloys and compounds and mercury, its amalgams and compounds are considered of occupational origin, as required by the Convention. The Committee points out that contrary to the system that was previously in force, the new list of occupational diseases lists the pathologies which are recognized as being of occupational origin without linking them to a list of corresponding occupational activities. In this respect, section 6(2) of the new Decree considers a disease as occupational when it is linked to the occupational activities of workers who are habitually exposed to factors which provoke diseases and are present in the workplace or result from specified occupations or jobs. ***In this respect, the Committee would be grateful if the Government would supply in its next report further details on the manner in which the procedure for recognition of occupational diseases operates, from the time of the medical diagnosis. Please also clarify whether a person who is affected by one of the pathologies listed in Appendix 1 to Decree No. 53/05 is presumed to have a disease of occupational origin. Finally, the Government is requested to indicate the manner in which the burden of proof applies to the recognition of occupational diseases.***

## Antigua and Barbuda

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1983)

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

For many years the Committee has been drawing the Government's attention to the fact that the national legislation (Workmen's Compensation Ordinance, No. 24 of 1956, as amended) on compensation for occupational accidents does not allow full effect to be given to the Convention. In its last report, the Government indicates that actions are currently being taken to ensure that revisions to national legislation are made. ***The Committee takes due note of this information and hopes that, in its next report, the Government will indicate the measures that have been taken in order to ensure the conformity of national legislation and practice with the following provisions of the Convention.***

***Article 5 of the Convention.*** Section 8 of the Workmen's Compensation Ordinance, No. 24 of 1956, 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.*** This provision of the Convention provides for additional compensation for victims of injuries who need the assistance of a third person. However, section 9 of the above Ordinance provides for additional compensation only in the event of temporary incapacity.

***Article 9.*** According to section 6(3) of the above Ordinance, the employer is responsible for paying the "expenses and reasonable cost" of medical treatment undergone by a worker as a result of an occupational accident up to a prescribed amount, whereas the Convention does not prescribe any limits in such cases. Furthermore, the legislation does not appear to make express provision for surgical and pharmaceutical costs, contrary to this Article of the Convention. ***The Committee therefore asks the Government to take the necessary steps to give full effect to this provision of the Convention.***

***Article 10.*** The Committee notes that the legislation does not ensure the provision of surgical appliances and artificial limbs in general. Section 10 of the abovementioned Ordinance provides for the supply of artificial limbs only when this is likely to improve the earning capacity. The Committee recalls that this provision of the Convention requires surgical appliances and artificial limbs to be supplied in all cases in which they are recognized as necessary, and not only with a view to improving the earning capacity. ***The Committee therefore asks the Government to take the necessary measures to bring its legislation into full conformity with 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.***

## Argentina

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1950)**

The Committee notes the information, as well as the statistics, supplied by the Government in its report and wishes to draw its attention on the following points.

1. ***Restrictive nature of the enumeration of the pathological symptoms resulting from exposure to the corresponding substances.*** In conformity with the provisions of national legislation, for each risk-producing substance, the left-hand column of the list of occupational diseases in Decree No. 658/96 gives a *restrictive* enumeration of the pathological symptoms resulting from exposure to the corresponding substances. It also provides for an annual review whereby new infections recognized as having their origin in exposure to a risk-producing substance in the course of an occupational activity may be added to the list with the prior agreement of the Standing Advisory Committee (section 40 of Act No. 24.557). In these circumstances, the *restriction* is, according to the Government, purely technical, since if the causal link between the risk-producing substance, the disease and exposure during work is proven, it is possible to request the above Committee to approve the incorporation of the disease in the list, thus recognizing that it is occupational in origin. The Committee nevertheless recalls that, by listing, for each disease in the schedule, the trades, industries and processes liable to cause the disease, the Convention aims to relieve workers in the trades and industries listed from the burden of proving that they have actually been exposed to the risk of the disease in question, which in some cases can be particularly difficult. Furthermore, the Convention is deliberately worded in general terms so as to cover all occupational diseases and all poisoning resulting from exposure to the substances listed in the schedule to the Convention when they affect workers engaged in the trades, industries and processes listed in the schedule. ***In view of the objectives pursued by the Convention, the Committee hopes that the Government will be able to reconsider this matter and that in its next report it will be in a position to indicate the measures taken or envisaged to change the current legislation so that the pathological symptoms corresponding to the diseases in the schedule to the Convention are non-restrictive. In the meantime, the Committee asks the Government to provide information on the working of the procedure for recognition of new occupational diseases by the Standing Advisory Committee, particularly as regards the determination of the causal link between the disease, the risk-producing substance and occupational exposure.***

2. In addition, the Committee wishes to make the following remarks with regard to certain items in the schedule:

- (a) In its previous comments the Committee had stressed the need to add to the item on anthrax a reference to the *loading and unloading or transport of merchandise*. The Government had stated, in this respect, that this reference covers the possibility of a worker coming into contact with organic remains contaminated by the anthrax bacillus and that this situation is provided for in the legislation by the final paragraph of the item on anthrax which mentions “workers who showed no symptom of the disease and, by exposure to the agent, develop certain of the clinical symptoms described”. *The Committee nevertheless expresses the hope that in the annual review of the list of occupational diseases it will be possible to add the loading, unloading or transport of merchandise in general to the activities likely to cause anthrax, in order to remove any ambiguity from the legislation.* In this connection, the Committee recalls that the provisions of the Convention on this point aim to establish a presumption of the occupational origin of the disease in favour of workers called upon to handle products which are so diverse in origin that it would be difficult if not impossible for them to prove that the merchandise transported was in contact with infected animals or remains of animals.
- (b) *The Committee also requests the Government to complete the enumeration of the diseases under the item on silica by an express reference to silicosis with or without pulmonary tuberculosis, if necessary with a reservation that the silicosis must be a determining factor in the incapacity or death, as the Convention allows.*
- (c) *Ultimately, the Committee asks the Government to indicate whether requests for recognition of the occupational nature of diseases have been made, under the abovementioned complementary recognition mechanism, by persons suffering from epitheliomatous cancer of the skin but who have not fulfilled the condition of at least ten years of exposure established by national legislation. If so, please provide information on any decisions taken in this respect by the competent authorities.*

## Barbados

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1974)

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

With reference to its previous observations, the Committee recalls that section 49 (in conjunction with section 48) of the National Insurance and Social Security (Benefits) Regulations of 1967 and section 25 of the Employment Injury (Benefits) Regulations of 1970 deprive a beneficiary residing abroad of the right to ask for the benefit to be paid directly to him at his place of residence, which is contrary to the provisions of *Article 5 of the Convention*. In its previous report of 2002, the Government stated that approval has been given for direct payment of the benefits in the country where the claimant is currently residing, that corresponding amendments of the National Insurance and Social Security Act were approved by the Government to bring it in accordance with *Article 5* of the Convention, and that the procedural steps were taken to submit these amendments to Parliament for enactment. In its latest report, received in June 2005, the Government indicates that a draft bill has been prepared for benefits to be paid to persons residing abroad and that a copy of the new provisions will be forwarded to the ILO as soon as they are adopted by Parliament. In addition, the report provides detailed statistics on the number and nationality of the beneficiaries to whom benefits are transferred abroad under the CARICOM Agreement on Social Security 1996 and the bilateral agreements with Canada and the United Kingdom. It also contains comments of the Congress of Trade Unions and Staff Associations of Barbados, which sees no reason why the Government of Barbados should not apply this Convention, particularly in view of the fact that Barbados is also bound by the CARICOM Agreement on Social Security 1996, which provides for equality of treatment for residents.

The Committee notes this information. It recalls that, in granting equality of treatment for residents of the contracting parties under their social security legislation, the CARICOM Agreement ensures protection and maintenance of the rights of beneficiaries “notwithstanding changes of residence among their respective territories – principles which underlie several of the Conventions of the International Labour Organization”. The Committee wishes to recall in this respect that, in accordance with the principle of the maintenance of rights through the provision of benefits abroad, as established by Convention No. 118, Barbados shall guarantee direct payment of the benefits to all entitled beneficiaries at their place of residence, irrespective of the country in which they reside and even in the absence of a bilateral or multilateral agreement to that effect. *It therefore trusts that the Government will make every effort to ensure that the bill is adopted in the very near future so as to ensure direct payment at their place of residence abroad of old-age, survivors’ and employment injury benefits, both to its own nationals and to nationals of any other Member that has accepted the obligations of the Convention in respect of these branches. The Committee hopes that the Government’s next report will contain a copy of the new provisions together with detailed statistics on the transfer of benefits abroad to beneficiaries, including Barbadian nationals, who are not covered by the CARICOM Agreement or bilateral agreements with Canada and the United Kingdom.*

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

## Bolivia

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1977)

The Committee notes the report supplied by the Government. It also observes that the ILO Subregional Office for Andean countries is currently carrying out a diagnosis of the Bolivian social security system in the framework of the

Decent Work Country Programme (project BOL/06/50M/NET). This diagnosis is being submitted to tripartite consultations and could serve as a basis for an overall reform of the Bolivian social security system. *With reference to the numerous questions raised in its previous comments, the Committee hopes that, with the technical assistance of the ILO, the Government will be able to make progress in finding solutions to the previously identified problems of application.* It will therefore undertake an in-depth analysis of the detailed information supplied by the Government at its next session, together with the relevant information from the above diagnosis, once it is adopted.

**Equality of Treatment (Social Security) Convention, 1962 (No. 118)**  
(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:

*Article 2, paragraphs 1(i) and 2, and Article 6 of the Convention.* In reply to the Committee's previous comments relating to section 51 of Supreme Decree No. 22578 of 13 August 1990, the Government indicates that under the terms of the Bolivian legislation, family allowances include the prenatal allowance, the birth allowance, the nursing allowance and the funeral allowance. The Committee notes this information. It is however bound to draw the Government's attention to the fact that these allowances do not fully respond to the concept of family benefit and family allowances within the meaning of the above Articles of the Convention. It also recalls that, in accordance with Article 40 read in conjunction with Article 1(e) of Convention No. 102, of which Part VII (Family benefit) was accepted by Bolivia when ratifying that Convention, the contingency covered is responsibility for the maintenance of children, with the term "child" meaning a child under school-leaving age or under 15 years of age. *In these conditions, the Committee once again expresses the hope that the Government will be able to re-examine the situation with a view to re-establishing a scheme of family benefit which complies with Part VII of Convention No. 102, and that, in doing so, full account will be taken of Convention No. 118, and particular of Article 6, which specifies that each Member, which, like Bolivia, has accepted the obligations of the Convention in respect of family benefit, shall guarantee the grant of family allowances both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention for that branch, in respect of children who reside on the territory of any such Member, under conditions and within limits to be agreed upon by the Members concerned.* The Committee once again wishes to draw the Government's attention to the possibility of having recourse to the technical assistance of the Office.

*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: 1977)

The Committee notes the report supplied by the Government. It also observes that the ILO Subregional Office for Andean countries is currently carrying out a diagnosis of the Bolivian social security system in the framework of the Decent Work Country Programme (project BOL/06/50M/NET). This diagnosis is being submitted to tripartite consultations and could serve as a basis for an overall reform of the Bolivian social security system. *With reference to the numerous questions raised in its previous comments, the Committee hopes that, with the technical assistance of the ILO, the Government will be able to make progress in finding solutions to the previously identified problems of application.* It will therefore undertake an in-depth analysis of the detailed information supplied by the Government at its next session, together with the relevant information from the above diagnosis, once it is adopted.

**Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)**  
(ratification: 1977)

The Committee notes the report supplied by the Government. It also observes that the ILO Subregional Office for Andean countries is currently carrying out a diagnosis of the Bolivian social security system in the framework of the Decent Work Country Programme (project BOL/06/50M/NET). This diagnosis is being submitted to tripartite consultations and could serve as a basis for an overall reform of the Bolivian social security system. *With reference to the numerous questions raised in its previous comments, the Committee hopes that, with the technical assistance of the ILO, the Government will be able to make progress in finding solutions to the previously identified problems of application.* It will therefore undertake an in-depth analysis of the detailed information supplied by the Government at its next session, together with the relevant information from the above diagnosis, once it is adopted.

**Medical Care and Sickness Benefits Convention, 1969 (No. 130)**  
(ratification: 1977)

The Committee notes the report supplied by the Government. It also observes that the ILO Subregional Office for Andean countries is currently carrying out a diagnosis of the Bolivian social security system in the framework of the Decent Work Country Programme (project BOL/06/50M/NET). This diagnosis is being submitted to tripartite consultations and could serve as a basis for an overall reform of the Bolivian social security system. *With reference to the numerous questions raised in its previous comments, the Committee hopes that, with the technical assistance of the ILO, the Government will be able to make progress in finding solutions to the previously identified problems of application.* It will therefore undertake an in-depth analysis of the detailed information supplied by the Government at its next session, together with the relevant information from the above diagnosis, once it is adopted.

## Cape Verde

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (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:

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).* 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 promise 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.*

## Central African Republic

### **Workmen's Compensation (Occupational Diseases) Convention, 1925** (No. 18) (ratification: 1964)

*Articles 1 and 2 of the Convention. Absence in the country of legislation covering occupational diseases.* The Committee notes the Government's indication in its last report, in the same way as in previous reports, that the occupational disease branch is not covered by the Central African Social Security Office. It also indicated previously that it did not have precise information on the manner in which occupational diseases are compensated, as their coverage is established through collective agreements, since the legislation on these matters is not applicable.

While taking due note of this information, the Committee is bound once again to express concern at the continued failure to give effect to the provisions of the Convention. The Committee recalls that by ratifying the Convention the Government undertook, firstly, to ensure that compensation shall be payable to workers incapacitated by occupational diseases or to their dependants in accordance with the general principles of the national legislation relating to compensation for industrial accidents, in accordance with *Article 1* of the Convention and, secondly, to consider as

occupational diseases those diseases and poisonings produced by the substances set forth in the Schedule appended to the Convention, in accordance with *Article 2*. ***Under these conditions, the Committee trusts that the Government will take all the necessary measures without further ado to ensure the compensation guaranteed by the Convention to workers affected by occupational diseases recognized by the Convention or their dependants.***

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1964)**

The Committee notes the information supplied by the Government which were received in September 2006 and May 2007, according to which, in general terms, Convention No. 118 is barely being applied owing to budgetary problems and no national legislation is ready to be enacted in this area. The Government indicates that equality of treatment with regard to the granting of benefits is subject, contrary to *Article 4, paragraph 1, of the Convention*, to the condition of residence of foreign nationals on the national territory. With regard to the payment of benefits abroad provided for by *Article 5, paragraph 1, of the Convention*, the Government indicates that no indemnity or benefit is paid when the beneficiary resides abroad, except in the case of persons appointed to an embassy or a representation of an undertaking whose headquarters are located in the Central African Republic. The granting of family allowances is made on condition that the children reside on the national territory, which is contrary to *Article 6 of the Convention*. Finally, no multilateral or bilateral social security agreement has been concluded with the member States to comply with the requirements of *Articles 7 and 8 of the Convention*, since the Central African Republic does not participate in any system of rights preservation. However, the Government points out that it has undertaken a far-reaching reform of national social legislation, including social security legislation, which takes account in particular of the Committee's observations concerning the application of Conventions Nos 18, 117 and 118.

***The Committee notes with regret that, since the ratification of the Convention in 1964, the Government has not managed to take the necessary measures to give effect to the principal provisions of the Convention, notwithstanding the persistent observations of the ILO supervisory bodies. It trusts, however, that in the context of the reform of the social sector announced in the report, the Government will be able to make specific amendments to the national legislation in order to bring it into full conformity with the Convention, requesting technical assistance from the ILO if necessary. The Committee once again indicates in detail the amendments in question in a direct request to the Government. Finally, it would be grateful if the Government would send it a copy of the new Social Security Code, enacted by Act No. 06035 of 28 December 2006, and to indicate how this takes account, in particular, of the Committee's observations concerning the application of the Convention.***

## **Chile**

### **Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35) (ratification: 1935)**

I. 1. The Committee notes 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 Constitution alleging non-observance by Chile of, inter alia, Convention No. 35 (GB.298/15/6, 298th Session, March 2007).

In its conclusions (paragraphs 45 to 53 of the report), the above committee noted the measures adopted by the Government to resolve the problem of the social security arrears, which was the subject of the representation, arising from the non-payment of the further training allowance by municipal employers to the teachers entitled to it. With regard to the over 140 municipalities that had failed to pay the further training allowance or to sign agreements on the subject, the committee set up to examine the representation noted the information provided by the Government on the measures adopted, including legislative measures, with the main intention of authorizing advance payments from the Common Municipal Fund in order to facilitate a solution to the problem affecting a number of municipalities that were still in arrears with the payment of further training allowances for teachers in the education services covered by Legislative Decree No. 1 of 1996 on the Teachers' Statute, issued by the Ministry of Education. In relation to the agreements signed to resolve the problem of arrears, the Committee set up to examine the representation noted with interest the Protocol Agreement adopted by the complainant organization and the Government in December 2003 to: "... evaluate the current system of further training with a view to revising the current further training allowance as from 2006". The committee set up to examine the representation considered that, in the event of non-compliance, the Ministry of Education should institute administrative proceedings and apply the penalties prescribed by law. It also trusted that the Government would provide it with detailed information on the manner in which supervision is carried out in practice, as well as the penalties that may have been applied to municipalities that have failed to pay the further training allowance and, in that case, on the measures taken to compensate the damages caused.

Finally, in its conclusions, the committee set up to examine the representation considered that the Committee of Experts should continue to follow up the matters raised in its report. The Committee of Experts notes the above and endorses the conclusions of the committee set up to examine the representation. ***The Committee of Experts hopes that the Government will give effect to the recommendations made by the committee set up to examine the representation, and it urges the Government to: (a) take all the necessary measures to solve the problem of the social security arrears arising***

from non-payment of the further training allowance; (b) continue and strengthen the supervision of the actual payment of the further training allowance by employers in arrears; and (c) ensure the effective application of deterrent sanctions in the event of the non-payment of the further training allowance.

*The Committee of Experts invites the Government to submit a report under article 22 of the ILO Constitution on the application of Conventions Nos 35 and 37 containing detailed information on all the measures adopted or envisaged to secure the effective payment of subsidies, including the further training allowance, by all the municipalities, and on the manner in which the situation has evolved as a result of these measures, indicating in particular: (a) the number of inspections carried out, in particular by the Ministry of Education, to verify payment of the further training allowance by the municipalities; the number and nature of the violations reported and the number and nature of the penalties imposed; (b) the number of municipalities remaining in arrears with regard to the payment of the further training allowance; (c) the amount of such arrears and the number of workers affected; (d) the amount of arrears settled; (e) the outcome of the legislative procedure concerning the bill aimed at resolving the problem of social security arrears and, once the bill has been adopted; (f) information on its implementation, including the number of municipalities requesting advances to enable them to pay the further training allowance; and (g) any agreement concluded with the aim of solving the problem of arrears.*

2. The Committee also notes the communication dated 18 July 2007, also made by the College of Teachers of Chile A.G., referring, in the same way as the above representation, to the problem of social security arrears arising from the non-payment of the further training allowance by municipal employers to teachers. This communication was forwarded to the Government on 5 September 2007.

II. 1. With reference to its previous comments, the Committee notes the Government's indication that the legislation governing the pension system based on individual capital accumulation has not been amended in a manner which affects the application of the Convention. The system of pensions based on capital accumulation does not make distinctions between contributors on the basis of the type of work performed in the case of industrial or agricultural work. The only workers who are covered by special provisions in relation to the amount of the contribution, its financing and pensionable ages, are those engaged in types of work classified as arduous. The requirements for entitlement to a pension, the manner of the calculation of pensions and the conditions for entitlement to the minimum benefits guaranteed by the State are the same for all workers, with the exception of those engaged in arduous types of work, who may retire at an earlier age than other workers, and who receive in their individual capital accounts, in addition to their own contributions, an additional employers' contribution.

2. In its previous comments, the Committee noted the conclusions and recommendations of the committee set up to examine the representation made by a number of Chilean unions of employees of Pension Fund Administrators (AFPs), under article 24 of the Constitution, alleging non-observance by Chile, inter alia, of Convention No. 35 (GB.277/17/5, 277th Session, March 2000). In accordance with the conclusions contained in paragraphs 18 to 35 of the report and its previous comments, the Committee of Experts reiterated the need to adopt the measures required to ensure that:

(i) The pension system established in 1980 by Legislative Decree No. 3500 is administered by non-profit-making institutions in accordance with the provisions of Conventions Nos 35 and 36 (*Article 10, paragraph 1*) and Conventions Nos 37 and 38 (*Article 11, paragraph 1*), unless the administration is entrusted to institutions founded at the initiative of the parties concerned or of their organizations and duly approved by the public authorities, in accordance with Conventions Nos 35 and 36 (*Article 10, paragraph 2*) and Conventions Nos 37 and 38 (*Article 11, paragraph 2*).

In this respect, the Government indicates that the pensions system governed by Legislative Decree No. 3500 of 1980 is a system designed on the basis of the administration of resources by private entities. The system was designed on the basis that a commission is paid by insured persons to the above entities in exchange for the administration of their funds. In this manner, entrusting the administration of insurance funds to non-profit-making entities would be similar to a pay-as-you-go system in which public entities administer the insurance funds of contributors, but is incompatible with a system of individual capital accumulation. ***The Committee notes this statement. In this respect, the Committee wishes to emphasize that, irrespective of the financing technique, whether collective or individual, the systems of capitalization that are in operation in highly socially developed countries show that this incompatibility does not exist and that the funds may be managed efficiently both by public and private institutions, without them necessarily being profit-making. Reference should be made, by way of illustration, to the fact that in Chile, in the field of employment injury, many mutual benefit associations are in operation which, without being profit-making, achieve their objectives in full coordination and complementarity with the rest of the Chilean social insurance system.***

(ii) Representatives of the insured persons participate in the administration of the system under conditions determined by national laws and regulations, in conformity with the provisions of Conventions Nos 35 and 36 (*Article 10, paragraph 4*) and Conventions Nos 37 and 38 (*Article 11, paragraph 4*).

In relation to this point, the Government indicates that the arguments outlined with regard to the previous point are still valid as it is necessary for the funds to be managed by entities with professional staff dedicated to that purpose. The participation of insured persons is guaranteed, in the view of the Government, by the possibility of choosing the type of fund in which compulsory and voluntary contributions are to be deposited and by choosing the AFP which will manage the funds of insured persons. ***The Committee notes this statement. However, it wishes to emphasize that other countries***

*in which systems of individual capital accumulation have also been adopted have systems of administration in which the participation of insured persons is guaranteed and which operate with a high level of specialization and efficiency. It therefore hopes that the Government will take the necessary measures, in conformity with the Convention, to give effect to the decisions of the Governing Body.*

(iii) The competent services carry out and strengthen their oversight of employers and impose effective sanctions to discourage recurrences of cases of failure to pay pension contributions.

On this point, the Government indicates that Chile has strengthened the guarantees of the social insurance rights of workers through the adoption of Acts Nos 20022 and 20023, which established new tribunals covering the collection of labour and social insurance contributions, and introduced new provisions respecting the collection through the courts of social insurance contributions. This legislation has strengthened the powers of the authorities and the means of supervising employers to ensure the payment of social insurance contributions for their workers. *The Committee notes the Government's statement with interest. It requests the Government to provide information, including statistical data, on the activities of the new tribunals for the collection of labour and social insurance contributions, with an indication of the number of penalties imposed and the texts of the rulings issued by the above tribunals.*

III. With regard to the other matters raised in its previous comments, the Committee observes that the Government has not provided information on the matters of principle. *This being the case, the Committee hopes that the Government will adopt the necessary measures to ensure, in accordance with Article 9, paragraph 1, of the Convention, that employers contribute to the resources of the insurance scheme and, in accordance with Article 9, paragraph 4, that the public authorities contribute to the resources or to the benefits of the insurance scheme.*

IV. In its previous comments, the Committee noted the information submitted by: the Directorate of the National Association of Academics of the University of Chile (A.G.); the Directorate of Act 19170 on the State Railway Company; the President of the National Association of Employees of the Directorate of Libraries, Archives and Museums (DIBAN); the Association of Professional and Technical Staff of the University of Chile (APROTEC); the Association of Public Health Employees, Western Region; the Directorate of the Federation of Associations of Employees of the University of Chile (FENAFUCH); and the Association of Public Employees for Redress for Pension-related Prejudice. In their observations, the above organizations allege that public employees who joined the individual capital accumulation pension system established by the Legislative Decree of 13 November 1980 have seen the amount of their pensions drop to one third of their real income or, at best, to under one half, upon retirement. This has given rise to a situation of inequality, since two workers of the same age with the same number of years' service and the same monthly benefits or income may be treated differently on retirement, with one receiving a pension amounting to one third of that of the other, merely because they belong to different pension schemes. According to the above organizations, as a result, some of the pensions already paid by the AFPs are lower than the minimum monthly wage. The Committee noted these observations and recalled that, in accordance with *Article 19 of the Convention*, the rate of the pension shall be an amount which, together with any means of the claimant in excess of the means exempted, is at least sufficient to cover the essential needs of the pensioner.

The Government indicates in this respect that those workers who joined the pension system based on individual capital accumulation and who had previously been covered by one of the funds of the former pension system are ensured a minimum old-age pension at the age of 65 years or above for men and at the age of 60 years or above for women when they have completed at least 20 years of contribution or attributable service in any of the social insurance systems in accordance with the provisions governing the corresponding scheme. Consequently, the transfer of workers covered by the pay-as-you-go to the system of individual capital accumulation does not involve the loss of the periods of contribution in respect of the years of service for the public system, which will still be acknowledged in the form of an acknowledgement voucher for the purpose of their pension benefits under the capital accumulation system, or so that they are granted entitlement to a minimum pension if their insurance funds are not sufficient to finance one.

The Government adds that under the terms of the agreement concluded with the National Association of Public Employees (ANEF), a Bill (*Boletín No. 3975-13*) is being examined by the National Congress which establishes a premium of 50,000 pesos a month for workers in the public sector who are covered by an AFP who, when retiring, receive a pension that is significantly lower than the income they received previously. Furthermore, on 7 June 2007, the President of the Republic sent a Bill (*Boletín No. 5173-05*) to the National Congress which, inter alia, establishes a labour retirement premium for personnel covered by the private pension system and who contribute to the system in respect of their employment in the public service and have complied with the other requirements established in this respect.

*The Committee notes with interest the compensatory measures adopted by the Government in respect of those public sector employees who were transferred to the individual capital accumulation insurance system established under the Legislative Decree of 13 November 1980 and who have seen the amount of their pensions reduced when taking retirement. As the above measures apply only to the public sector, the Committee hopes that the Government will examine the possibility of extending similar measures to all other insured persons.*

[The Government is asked to reply in detail to the present comments in 2008.]

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

See the observation under Convention No. 35.

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

See the observation under Convention No. 35.

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

See the observation under Convention No. 35.

**Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980]**  
(No. 121) (ratification: 1999)

The Committee notes the detailed information sent by the Government in its report for the period ending on 31 August 2006. It also takes note of the new laws that have been adopted in the area of occupational health and safety and occupational risks.

In its previous comments, the Committee noted the information sent by the Government in response to comments made by the Autonomous Confederation of Workers of Chile (CAT), the Latin American Central of Workers (CLAT) and the International Trade Union Confederation (ITUC) alleging, among other things, failure to apply certain provisions of Convention No. 121 to the workers of CODELCO-Chile – División Andina who have suffered total or partial work incapacity due to silicosis. The Committee noted that, according to the Government, 9 per cent of CODELCO's active workers suffer from silicosis and not 28 per cent as alleged. Noting that the high percentage of workers still affected by silicosis was an evidence of a high risk situation, the Committee asks the Government to continue to take preventive measures to reduce the levels of exposure to silica to the minimum possible. It also asks the Government to provide, in accordance with *Article 26 of the Convention*, detailed information on: (a) measures taken in this regard, indicating the inspections carried out in this sector and the corresponding reports; (b) the rehabilitation measures taken in order to prepare incapacitated workers to resume their previous activities, or, if this is not possible, to perform an alternative gainful activity suited to their abilities and qualifications; (c) developments in cases being heard by the courts.

On the matter of risk prevention measures, the Committee notes that the supervision of measures or activities carried out in each worksite is the responsibility of the various regional health ministry secretariats, which, pursuant to Act No. 19937, have taken over these duties from the health services and, without prejudice to the powers of the labour directorate, the duties set forth in section 191 of the Labour Code. *The Committee hopes that the Government will shortly seek the requested information from the competent authorities and send it with its next report.*

With regard to measures for the rehabilitation and occupational pre-training of workers who have suffered industrial accidents or occupational diseases, the Government indicates that these are carried out by each insurance management body and Act No. 16744, free of charge whenever this is necessary. As to measures to facilitate the placement of workers who have been incapacitated, the Government indicates that these are included in the abovementioned measures and that in Chile there is a National Disability Fund (FONADIS) through which the programme for the placement of persons with disabilities in jobs in the labour market is implemented. The Committee takes note of this information. It also notes the report on rehabilitation for work produced by the Social Security Supervisory Authority for 2003–06, and the statements made by this Authority on rehabilitation. *It asks the Government to continue to provide information, including statistics, on rehabilitation measures taken by the insurance management bodies governed by Act No. 16744, and on the FONADIS programme for rehabilitation and training.*

Furthermore, in the context of the ILO/WHO Global Programme for the Elimination of Silicosis by 2030, the Committee notes that the Ministries of Labour, Social Security and Health recently confirmed the Government of Chile's commitment to strive for the elimination of silicosis by 2030 and that to that end they will head to the development of a national tripartite plan to achieve this goal. On the prevention of silicosis-related occupational risks at work, the Government indicates that, in the context of social security for health at work, standing activities for the prevention of occupational risks are to be conducted which will concern all such actions, procedures or instructions as the management bodies or enterprises with delegated management must carry out within the existing legal and regulatory framework, in relation to the nature and magnitude of the risks associated with the production activities in the employing entities affiliated either to the enterprise with delegated administration, and which the latter must implement, as appropriate, with assistance from the occupational risk prevention departments and/or works committees, as the case may be, regardless of whether or not industrial accidents or occupational diseases occur. To this end, a record must be kept of measures taken and their results. *The Committee asks the Government to provide examples of the records of measures carried out and their results, together with information on measures taken by the Labour Inspectorate, together with the corresponding reports.*

As to the legal proceedings before the courts, the Committee takes note of *Oficios* Nos 60826 and 32184 of 9 December 2005 and 16 May 2007, respectively. The first informs the Chief of the International Relations Department of

the Ministry of Labour and Social Welfare of the status of the cases mentioned and which are brought against the División Andina de CODELCO-Chile, and the second response to a request from the First Court of los Andes, which is hearing case No. 313-06 “Ortiz and others v CODELCO-Chile – División Andina”, which is being sued for damages.

[The Government is asked to reply in detail to the present comments in 2008.]

## China

### Hong Kong Special Administrative Region

#### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (notification: 1997)

The Committee notes the information provided by the Government and wishes to draw its attention to the following point.

*Article 5 of the Convention. Compensation payable in the form of periodical payments in the case of death or permanent incapacity resulting from an employment injury.* In reply to the Committee's comments, the Government reiterates the reasons which, in its view, justified the payment in the form of a lump sum of the compensation payable in the case of an accident resulting in permanent incapacity or death, and it adds that no complaints have been received concerning the manner in which compensation is provided for employment injury. The Government adds that mechanisms are in place to cater for the special needs of injured employees or their family members in the event of fatal accidents. Furthermore, under certain circumstances, particularly in the case of persons with physical or mental disabilities, the courts may intervene to determine the manner in which the compensation is to be managed and may determine that it shall be paid in the form of a periodical payment. Finally, the Government adds that the Hong Kong Special Administrative Region has a comprehensive network of social assistance which can protect the population against need, including injured employees and their families. At the request of the courts, the Social Welfare Department, based on a case-by-case analysis, may recommend the payment of compensation to injured employees or their families in the form of periodical payments taking into account family circumstances, the preferences indicated with justification, and the capacity of beneficiaries to manage the lump sum paid in compensation. Subject to a means test, the social assistance also provides needy families with an income supplement to cover their basic needs, thereby providing a social safety net for persons who cannot support themselves financially. This allowance is adjusted to the cost of living and provided to all those in need, irrespective of whether they have received compensation for employment injury in the form of a lump sum or in another form.

The Committee notes this information, and particularly the possibility, on a case-by-case basis and subject to a decision by the competent authorities, of obtaining compensation in the form of periodical payments in the case of employment injury resulting in permanent incapacity. It also notes that the social assistance, subject to a means test, guarantees a minimum income to persons in need. Accordingly, while the payment of a lump sum is the principal form of the benefit, periodical payments may be decided upon based on several factors in each individual case, with the social assistance providing a minimum income to persons in need who have not made proper use of their compensation in the form of a lump sum. ***In this respect, the Committee would be grateful if the Government would provide detailed information in its next report on the cases in which, and the frequency with which, the competent authorities provide compensation in the form of periodical payments rather than a lump sum to injured workers or their dependants. It would also be grateful to receive statistical data on the number of beneficiaries of social assistance allowances who have initially received compensation in a lump sum as a consequence of employment injury. It further requests the Government to indicate the number of months' wages represented on average by the lump-sum payments made to injured workers suffering from total and partial permanent incapacity, or to their survivors.***

The Committee recalls that the purpose of the Convention is to ensure that a person suffering permanent incapacity as a result of an employment accident (or her or his survivors in the event of death) has the means for subsistence throughout the contingency. Accordingly, the payment of compensation in the form of a lump sum is only authorized when a guarantee that it will be properly utilized is first provided to the competent authorities. Indeed, the payment of compensation in the form of a lump sum, even though it often offers advantages, also involves the risk that it will not be utilized properly by inexperienced beneficiaries who do not have sufficient knowledge or means to convert it into a satisfactory level of income. ***The Committee therefore hopes the Government will re-examine the matter in the light of the above comments and that it will in future ensure that, on each occasion that compensation is paid in the form of a lump sum, the competent authorities need to first receive guarantees as to its proper utilization. It requests the Government to indicate the progress achieved in this respect.***

## Colombia

### **Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)** (ratification: 1933)

1. *Part V of the report form. Application of the Convention in practice. Gradual extension of the number of persons covered.* In its previous comments, the Committee invited the Government to keep it informed of measures taken to continue the geographical extension of coverage of the workers' compensation system, in order to enable all agricultural wage earners covered by the Convention to be entitled to the benefits provided by the general system for employment injury compensation (*Sistema General de Riesgos Profesionales* (SGRP)). It therefore asked the Government to continue supplying information on the number of wage earners affiliated to the SGRP and, in particular, statistics on the number of insured wage earners in the agricultural sector in relation to the total number of wage earners working in this sector.

In its last report, the Government states that between 2005 and 2006 the total number of workers affiliated to the SGRP increased from 5,104,050 in 2005 to 5,796,531 in 2007, i.e. a total of 692,481 newly affiliated workers. However, the Government states that it does not have disaggregated statistics concerning the proportion of workers employed in the agricultural sector in this total. The Committee can therefore only emphasize that, in the absence of detailed statistics on this subject, it is unable to evaluate whether progress has been made in the extension of coverage of agricultural wage earners by the SGRP. In this respect, it notes that even though the total number of persons affiliated to the SGRP (agricultural and non-agricultural workers) actually increased between 2005 and 2006, it remains slightly below the number communicated by the Government in its previous report, and this does not appear to demonstrate real progress in this area. ***The Committee therefore trusts that the Government will supply information in its next report on tangible results achieved in the gradual extension to all agricultural wage earners of the protection guaranteed to them by the Convention, and that it will take all necessary steps to be able to supply statistical information on the number of wage earners affiliated to the SGRP in relation to the total number of wage earners, and also on the number of insured wage earners in the agricultural sector in relation to the total number of wage earners working in this sector.***

2. The Committee notes the Government's statement that specific measures have been taken to promote health protection and prevent occupational accidents involving women working on an informal basis in the rural sector. These measures have included training, consciousness-raising and action, and have sought to improve the conditions of health and the quality of life of this section of the population. Accordingly, 2,000 women from 20 departments benefited from this programme between 2005 and 2006 and the objective is to cover 12 new departments and some 1,200 women in 2007. ***The Committee notes this information and would be grateful if the Government would keep it informed in subsequent reports of the progress made with regard to the prevention of occupational accidents and the improvement of the conditions of health of informal workers in the agricultural sector.***

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1933)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation, which read as follows:

*Article 2(1) of the Convention.* The Committee notes with interest, from the statistics supplied by the Government, that the number of workers affiliated to the general system for employment injury is increasing, from 4,320,038 members in 1996 to 6,185,191 members in 1998. ***In this regard the Committee requests the Government to communicate, on the one hand, information on the measures taken to ensure that all employers conform with section 4(c) of Decree No. 1295 cited above, in the practice of affiliation of their workers and, on the other hand, to continue to communicate statistical information on the number of workers affiliated to the general system for employment injury compared to the total number of salaried persons, both in the private and the public sector. Furthermore, the Committee again requests the Government to supply detailed information on the implementation of section 4(e) of Decree No. 1295, under which employers who do not affiliate their workers to the system shall be responsible for the benefits guaranteed by the above Decree in cases of occupational accidents.***

*Article 5.* In reply to the earlier comments of the Committee regarding payment of compensation in the form of a lump sum where the worker suffers a definitive decrease in his or her capacity for work of between 5 and 50 per cent, the Government indicates that the legislation does not provide for the adoption of measures to ensure that the above compensation will be properly utilized. The Committee recalls in this respect that, under this provision of the Convention, compensation payable in cases of accidents where permanent incapacity results shall be paid in the form of periodical payments; they may only be paid wholly or partially in the form of a lump sum if the competent authority is satisfied that it will be properly utilized. The Committee lays all the more stress on this point since the legislation authorizes payment in the form of a lump sum for decreases in the capacity for work of up to 50 per cent, a decrease which could result in a substantial loss in earning capacity. ***Under these circumstances, the Committee hopes that the Government will indicate in its next report the measures taken or envisaged to guarantee the full application of this provision of the Convention.***

*Article 11.* 1. In its earlier comments, the Committee had recalled the need to take measures to ensure in all circumstances the payment of compensation to victims of employment injuries and their dependants and to guarantee payment in the event of the insolvability of the employer, in view of the fact that, under section 4(e) of Decree No. 1295, where the employer has not affiliated his workers to the general system for employment injury, he remains responsible for the payment of their benefits. The Government indicates in this regard that, under the Labour Code, claims arising from wages, social benefits and other compensation are accorded a preferential status. While noting this information, the Committee considers that the preferential status allowed to these claims is not alone sufficient to ensure full application of this provision of the Convention, especially where the employer is responsible for the long-term payment of benefits (disability or survivor's benefits). ***It consequently***

*requests the Government to indicate in its next report the measures taken to guarantee full application of this provision of the Convention.*

2. In reply to earlier comments by the Committee, the Government indicates that the Banking Supervisory Authority exercises financial control over the insurance companies authorized to operate in the employment injury insurance branch. Moreover, the Guarantee Fund for Financial Institutions (FOGAFIN) guarantees the payment of benefits to these workers in the event of the insolvency of the insurance companies. The Committee notes this information. *It requests the Government to communicate additional information in its next reports on the implementation of the FOGAFIN guarantee, indicating in particular whether the pertinent regulation provided under section 83 of Decree No. 1295 has been adopted and, if so, supplying a copy thereof. Please also specify the manner in which medical benefits are guaranteed in the event of insolvency of insurance companies.*

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

### **Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1933)**

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation, which read as follows:

*Non-payment of social security contributions by the company Intercontinental de Aviación.* The Committee notes the information provided by the Government in its report in reply to the observations made in 2003 by the Colombian Association of Civil Pilots (ACDAC) concerning the non-payment of social security contributions by the company *Intercontinental de Aviación* in relation to its employees. It notes, in this respect, that an inspection of the above company carried out in July 2004 ascertained the failure to pay social security contributions for the period 1998 to 2004. The Government adds that the company has since been closed by order of the Civil Aviation Administrative Department and that the retroactive payment has been ordered of the sums due in respect of contributions to the global social security scheme. *The Committee notes this information and requests the Government to continue to keep it informed of the outcome of this matter and, in particular, of the situation of the workers of the above company in relation to health insurance for both the period prior to the closure of the company and the period since then. The Committee also takes the opportunity to request the Government to indicate the measures that have already been taken or are envisaged to ensure greater compliance in future with the obligations deriving from the Convention and to prevent such clear cases of non-compliance persisting over such long periods.*

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

## **Comoros**

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1978)**

The Committee notes the information communicated by the Government in its latest report and would like to draw its attention to the following matter.

*Article 2 of the Convention. Scope of application.* In its previous comments, the Committee noted the observations sent by the Union of Independent Trade Unions of Comoros Workers (USATC) which referred to the inefficiency of the National Social Insurance Fund and the inexistence of a service for registering workers with it, which, in practice, results in many wage earners not being declared and therefore not being covered by the Fund. In this regard, the Government stated that this situation was due essentially to problems of communication between Anjouan, the headquarters of the Fund, and Moroni, the capital of Comoros. Consequently, the Committee asked the Government to take, in the near future, all the necessary measures to improve the functioning of the Fund.

In its latest report, the Government states that an awareness-raising policy has been implemented to persuade the management of public or private enterprises, undertakings or establishments to register with the National Social Insurance Fund, so that the benefits provided for by national legislation in the event of occupational accidents are paid to all workers employed in such entities. With regard to workers who are not registered with the Fund, the Government states that some abuses have been noted in respect of the application of the Convention and that, consequently, it intends to extend National Social Insurance Fund registration to all workers. *The Committee notes this information with interest and asks the Government to continue providing information on the progress made in progressively extending the application of the national legislation to all workers, employees and apprentices employed in public or private enterprises, undertakings or establishments, in accordance with this provision of the Convention. In the meantime, the Committee asks the Government to indicate the manner in which it is ensured, in practice, that the Convention applies to workers who are not declared with the National Social Security Fund and to specify, in particular, how national legislation and practice guarantee these workers compensation and the payment of medical expenses by their employers. Moreover, the Government is requested to indicate in its next report the penalties incurred and those effectively imposed in the event of failure to comply with the obligation to ensure that workers are covered by occupational accident insurance. The Government is also asked to indicate whether there is any particular aspect that the labour inspection bodies are required to monitor when carrying out inspection visits and to provide copies of extracts of any relevant inspection reports in this respect. The Government is also asked to provide copies of the Act relating to the National Social Insurance Fund, the Decree relating to its statutes and the Order establishing the organization, working rules and system for the financing of the National Social Insurance Fund.*

*Part V of the report form. Statistical information on the application of the Convention.* In its previous comments, the Committee asked the Government to provide information, in particular statistics, on the application of the Convention in practice. In this regard, the Government indicates that the labour administration services do not have a statistics department capable of providing reliable statistical data and that no notable progress has been recorded in respect of the reorganization and strengthening of the national system of statistics and information on the labour market. The Committee notes that the Government requests the technical assistance of the Office and hopes that the Office will soon be in a position to provide this technical assistance.

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1978)**

The Committee notes that ever since Comoros ratified the Convention in 1978, it has had to draw the Government's attention to the need to amend the content of section 29 of Decree No. 57-245 of 24 February 1957 on the compensation and prevention of occupational accidents and diseases. Pursuant to this provision, foreign victims of occupational accidents who have moved abroad receive as compensation only a lump sum equal to three times the amount of the periodical payment granted to them, whereas nationals continue to receive their periodical payments. Foreign dependants no longer residing in Comoros only receive a lump sum not exceeding the value of the periodical payment established by order. Finally, the dependants of a foreign worker employed in Comoros are not entitled to any periodical payments if they did not reside in the country at the time of the worker's accident.

In its latest report, as in those sent since 1997, the Government states that in practice, no distinction is made between national and foreign workers in respect of their treatment in terms of occupational accident compensation. It states that foreign workers continue to receive their cash benefits abroad provided that they give their new address. The Government's report does not however indicate the progress made in respect of the draft text which, according to the information sent by the Government in its previous reports, should repeal the provisions of Decree No. 57-245 which are inconsistent with the Convention.

**Consequently, the Committee trusts that the Government will take adequate measures, without delay, to bring the national legislation fully into line with the Convention, which provides that foreign nationals of States which have ratified the Convention, and their dependants, shall receive the same treatment as that guaranteed to nationals in respect of compensation for occupational accidents.**

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1978)**

*Article 2 of the Convention. National schedule of occupational diseases.* For many years, the Committee has been drawing the Government's attention to the need to amend Order No. 59-73 of 25 April 1959 as the schedules annexed to it do not cover all the occupational diseases listed in *Article 2* of the Convention. In this respect, the Government indicates in its last report that Order No. 59-73 referred to above has become obsolete and that the schedule of occupational diseases applicable in Comoros is that appended to *Article 2* of the Convention. This schedule is communicated to enterprise doctors and to employers' and workers' organizations. **While taking due note of this information, the Committee considers that it would be more appropriate, particularly with a view to achieving greater clarity and legal security, for the Government to formally repeal the above Order and replace it with a new legislative text recognizing the occupational origin of the diseases in the Schedule attached to Article 2 of the Convention. That would also provide an opportunity to adopt all the technical measures in this respect, thereby guaranteeing the proper operation of the system for the recognition of occupational diseases, for example, by establishing the conditions for the recognition of occupational diseases by physicians who are duly trained in this respect or by establishing minimum periods of exposure to the toxic substances and agents contained in the schedule.**

*Operation of the system for the recognition of occupational diseases.* With reference to the comments made previously by the Union of Autonomous Organizations of Comoron Workers (USATC) reporting the absence of a technical structure for the recognition of occupational diseases and of a national supervisory mechanism, the Committee notes the Government's indication that it is aware of the need to establish an occupational health service in this respect. Among the initiatives taken in this regard, the Government refers to a survey on occupational health undertaken by the General Directorate of Labour at the enterprise level. It also indicates that a study on the basis for a national occupational safety and health policy is currently being prepared. The Committee takes due note of this information and observes that the Government would like to benefit from the technical assistance of the Office with a view to the establishment of a national statistical service. The Committee hopes that the ILO will be in a position to provide the assistance requested in the very near future and that this will also be an occasion to assist the national authorities to improve the operation of the National Social Insurance Fund in general.

## Costa Rica

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1972)

I. The Committee notes the information provided by the Government in its last report. The Committee notes in particular the information on the operation of the compulsory and voluntary schemes administered by supplementary pension institutions.

1. With reference to its previous comments, the Committee notes with interest that in April 2005 the Social Security Fund of Costa Rica (CCSS) approved the amendment of sections 5 and 24 of the Regulations on invalidity, death and survivors' insurance, of 29 June 1995, with a view to guaranteeing, in accordance with *Part V, Article 29, paragraph 2(a), of the Convention*, the provision of a reduced old-age pension to a protected person who has completed a minimum of 15 years of contribution. **The Committee requests the Government to indicate whether the above amendment has entered into force and, if so, to provide a copy of the text amending the Regulations of 2005.**

II. With reference to its previous comments, the Committee observes that the Government's report does not reply to most of the issues raised. This being the case, it is bound to reiterate the points raised previously.

1. With reference to its previous comments, the Committee once again finds that the Government's report does not contain the information requested in the *report form* under *Title VI, Article 65*, of the Convention. In its report, the Government confines itself to indicating that, in accordance with the Regulations on pension insurance, the CCSS undertakes the re-evaluation or adjustment of current pensions. **With a view to being able to assess the real impact of pension increases in relation to fluctuations in the general level of earnings and the cost-of-living index, the Committee once again requests the Government to indicate whether pensions have been revalued and, if so, to provide information on the cost-of-living index, earnings and benefits in relation to a single period, in accordance with the information requested under Title VI, Article 65, of the Convention.**

2. *Part VI (Employment injury benefit), Articles 34, 36 and 38 of the Convention (also in conjunction with Article 69)*. (a) With reference to its previous comments, the Committee notes the information provided by the Government to the effect that the medical assistance envisaged in section 218 of the Labour Code is in compliance with the provisions of *Article 34, paragraph 2*, of the Convention.

(b) With regard to the provision of cash benefit throughout the contingency in the event of minor or partial permanent disability, and in the event of death, the Government admits that in the case of minor permanent disability, section 218 of the Labour Code only gives entitlement to a five-year periodical payment, whereas *Article 36* of the Convention envisages the provision of a periodical payment for life. With regard to partial incapacity, the Government indicates that, although section 239 of the Labour Code envisages a ten-year periodical payment, in a resolution (VIII of 10 December 1990) the Executive Board of the National Insurance Institute decided to "convert the periodical payments for permanent partial incapacity into payments for life, in compliance with the provisions of the Labour Code, such that the period of ten years may be extended for consecutive periods of five years where, through socio-economic studies, it is demonstrated that the beneficiary is substantially dependent on the periodical payment for subsistence, or that the latter represents 50 per cent or more of her or his income". The Committee notes this information.

The Committee observes that the degree of loss of earnings capacity considered to be a minimum threshold by the legislation (section 223 of the Labour Code) ranges between 0.5 per cent and 50 per cent. The Committee has always considered that permanent incapacity for which the degree of loss of earnings capacity is higher than 25 per cent cannot be considered a minimal level of loss of capacity. **This being the case, the Committee is bound to hope once again that the Government will take the necessary steps to amend the relevant provisions of the Labour Code so that in all cases of permanent incapacity and partial incapacity higher than 25 per cent or death periodical cash payments are granted for life, in accordance with the Convention, without any condition as to resources.**

The Committee would also be grateful if the Government would provide detailed information on the issues raised in a direct request.

[The Government is asked to reply in detail to the present comments in 2008.]

## Democratic Republic of the Congo

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1987)

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

In response to the comments that the Committee has been making for several years concerning the harmonization of the national legislation with the requirements of the Convention as regards *Part X (Survivors' benefit), Articles 60 to 64, and Part XIII (Common provisions), Articles 70 and 71, paragraph 1 (in relation with Part VII (Family benefit), Article 39), of the Convention*, the Government indicates that the Ministry of Labour and Social Insurance has taken steps to convene the 30th Session of the National Labour Council with a view to examining and adopting draft legislation to issue a Social Security

Code. In this situation, the Committee suggests that the Government might have recourse to ILO technical assistance to ensure that the above draft legislation contains provisions giving effect to the above requirements of the Convention. Furthermore, the Committee notes that the Government has not complied with its obligation to provide a *detailed* report in 2006 containing the information and statistics requested in the report form on the Convention adopted by the Governing Body of the ILO. ***The Committee therefore requests the Government to supply a detailed report for examination at its next session in November-December 2008, also containing full particulars of the progress made in the work of the National Labour Council and other bodies involved in the process of adopting 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.***

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (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 5 of the Convention (Payment of benefits abroad).* In reply to the Committee's previous comments, which it had been making for several years, the Government recalls that section 50(7)(a) of the Legislative Decree on Social Security of 1961 allows the suspension of benefits where the beneficiary resides abroad, subject to the obligations assumed under international agreements. The Government states in this respect that the reciprocity agreements concluded by the Democratic Republic of the Congo with other countries do not contain discriminatory provisions, and that, where workers who are nationals of other countries fulfil the conditions required under these agreements, they benefit from treatment that is equal to that of Congolese workers. It is envisaged that transfers of social security benefits will take place in accordance with the agreements in force establishing financial arrangements between the two contracting parties. For example, an administrative arrangement related to the general social security agreement provides for a financial arrangement between the central banks of contracting countries for the payment of benefits. Efforts are currently being made to conclude general social security agreements with certain African countries, such as Angola, Tanzania, Zambia and Zimbabwe. However, the Government indicates that no agreement is currently available for the good reason that no ratifications of the agreement have yet been registered. In the absence of such agreements, the necessary measures to transfer benefits will have to be made by common agreement between the interested parties.

The Committee wishes to remind the Government in this respect that, by ratifying the Convention and accepting its obligations for the invalidity, old-age and employment injury branches, the Government has undertaken to guarantee provision of the respective benefits both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention for the branches in question, and to refugees and stateless persons, *even in the absence of reciprocity agreements or bilateral social security agreements.* ***The Committee therefore trusts that, while awaiting the conclusion of bilateral agreements, the Government will take unilateral measures to guarantee in law and practice the provision of benefits abroad for its own nationals and for the nationals of the countries following in relation, respectively, to branch (d) (invalidity benefit): Brazil, Cape Verde, Ecuador, Egypt, France, Iraq, Italy, Jordan, Kenya, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mexico, Netherlands, Philippines, Rwanda, Syrian Arab Republic, Tunisia, Turkey and Venezuela; branch (e) (old-age benefit): Barbados, Brazil, Central African Republic, Guinea, Iraq, Israel, Italy, Kenya, Libyan Arab Jamahiriya, Mauritania, Mexico, Netherlands, Philippines, Rwanda, Syrian Arab Republic, Tunisia, Turkey and Venezuela; branch (g) (employment injury benefit): Bangladesh, Barbados, Brazil, Cape Verde, Central African Republic, Denmark, Ecuador, Egypt, Finland, France, Germany, Guinea, Iraq, Ireland, Israel, Italy, Jordan, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mexico, Netherlands, Pakistan, Philippines, Rwanda, Suriname, Sweden, Syrian Arab Republic, Tunisia, Turkey, Uruguay and Venezuela. The Committee would be grateful if the Government would forward the present comments to the Commission for the Reform of Social Security established by Ministerial Order No. 12/CAB-MIN/TPS/AR/KF/038/2002 of 23 February 2002, the text of which was provided by the Government with its report on the application of Convention No. 102, in view of the fact that the above Commission is entrusted with updating the draft Social Security Code and other legislative texts, and for issuing opinions and views on any matter relating to social security.***

*Articles 7 and 8.* In reply to the Committee's previous comments, the Government indicates in its report that, with a view to the participation of the Democratic Republic of the Congo in a scheme for the maintenance of acquired rights and rights in course of acquisition, efforts are being made in the context of the conclusion of general social security agreements with African countries with which the Democratic Republic of the Congo shares borders or is developing various forms of cooperation. The Government indicates that such an agreement was signed by the Democratic Republic of the Congo in 1979 and by Zambia in 1987, but has not been ratified, while Angola, Zimbabwe and the United Republic of Tanzania are still at the negotiating stage. ***In view of the fact that, according to this information, the process of negotiation described by the Government has already lasted over 20 years without achieving any results in terms of agreements that have been ratified and applied in the countries in question, the Committee would be grateful if the Government would indicate the measures which have been taken or are envisaged to complete the process that has been set in motion as rapidly as possible.***

***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:

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.*

## Djibouti

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1978)

The Committee notes the information communicated by the Government and the General Union of Djibouti Workers (UGTD). The Committee notes that the Government's report refers exclusively to section 135 of Act No. 133/AN/05/5ème of 26 January 2006 issuing the Labour Code, which sets forth the procedures for reporting occupational accidents to the competent authorities. It also notes that, according to the UGTD, Djibouti has no legal framework relating directly to compensation for occupational accidents. In this regard, the Committee recalls that at the beginning of the 1990s, the Social Security Fund which manages the industrial accidents scheme had, with ILO assistance, begun the process of codifying and adapting the national legislation. This had made it possible to prepare a Bill and an implementing Order which were to be submitted to the competent authorities in order to ensure better implementation of the Convention. *In this regard, the Committee would be grateful if the Government would indicate in its next report the follow-up given to the abovementioned reform Bill. It recalls that section 135 of the Labour Code, referred to in the Government's report, cannot be considered sufficient to implement the provisions of the Convention concerning compensation for occupational accidents.*

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1978)

The Committee notes that the Government's report has not been received. It also notes the comments made by the General Union of Djibouti Workers (UGTD) referring to the lack of legal provisions applying the Convention as well as to the Government's role in taking measures to ensure equality of treatment between national and foreign workers with respect to occupational accidents. *The Committee therefore hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous observation which read as follows:*

The Committee notes that, since the Convention was ratified in 1978, it has been drawing the Government's attention to the need to amend section 29 of Decree No. 57-245 of 1957 on the compensation of occupational accidents and diseases. The Committee has pointed out that under this provision, unlike nationals, foreign workers injured in industrial accidents who transfer their residence abroad receive, instead of the periodical payments paid to them previously, a lump sum payment equal to three times the periodical payments they received previously. The Committee observes that, although the Government has stated several times that this residence requirement is invoked only occasionally in practice, it has still not repealed this provision formally despite repeated requests from the Committee. In the reports it has been sending since 2000, the Government has referred to a draft reform of the Labour Code enabling national laws and regulations to be brought fully into line with the Convention through repeal of the residence requirement set in the 1957 Decree. According to the Government, the draft new Labour Code should be adopted by the end of 2005 or in early 2006. *The Committee accordingly hopes that the Government will be in a position to inform the Committee in its next report that its legislation has been brought into conformity with Article 1, paragraph 2, of the Convention under which nationals of States that have ratified the Convention and their dependants are granted the same treatment as Djibouti grants to its own nationals in respect of workers' compensation, without any condition as to residence.*

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

### **Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1978)**

The Committee notes that the Government's report has not been received. It also notes the comments made by the General Union of Djibouti Workers (UGTD) referring to the need to establish a sickness insurance scheme. The Committee hopes that a report will be submitted for examination at its next session and that it will contain a reply to the UGTD's comments and to the Committee's previous observation, which read as follows:

In response to the Committee's previous comments, the Government confirms that the Social Protection Body (OPS), created in 1997, is responsible for covering medical benefits, but cash benefits remain the responsibility of the employer. The sickness insurance scheme is to be re-examined in the light of the Convention in the context of the review of the labour legislation which the Government plans to undertake with assistance from the Office. The Committee notes this information. It recalls that the sickness benefits payable under *Article 3 of the Convention*, read in conjunction with *Article 1*, to an insured person unable to work by reason of the abnormal state of his bodily or mental health, must be financed from a *system of compulsory sickness insurance* and shall not be borne directly by the employer. *In these circumstances, it hopes that the Government will be able to take the necessary measures to ensure that sickness benefit can be paid to all workers covered by the Convention as part of a sickness insurance scheme, in accordance with the provisions of the Convention. The Committee asks the Government to provide a copy of any legislation adopted to this effect and of any texts regulating the provision of medical benefits by the OPS in the event of illness of insured persons, in accordance with Article 4 of the Convention.*

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

### **Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)** (ratification: 1978)

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

In reply to the Committee's previous comments on the need to introduce an invalidity insurance scheme in accordance with the Convention, the Government states that this Convention is not in keeping with the social, political, legal and economic situation in Djibouti. Industry in the country is still embryonic despite the emergence of a few factories in the last few years. The Committee takes note of this information and wishes to remind the Government that the Convention applies to workers, employees and apprentices not only in industrial enterprises but also in commercial enterprises and the liberal professions and to outworkers and domestic servants. It also notes from the additional information supplied by the Government that the latter hopes to consider this matter in the context of the revision of labour laws and regulations that it hopes to undertake with the Office's assistance. *The Committee therefore trusts that as part of that revision the Government will be able to review the question of setting up an invalidity insurance scheme adapted to the country's needs and possibilities and in conformity with the fundamental provisions of the Convention. It asks the Government to provide information on 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.*

## **Ecuador**

### **Medical Care and Sickness Benefits Convention, 1969 (No. 130)** (ratification: 1978)

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

The Committee notes the adoption on 30 November 2001 of the new Social Security Act. *It asks the Government to indicate whether the new Act has come into force and, if so, to please provide detailed information on the extent to which the new legislation gives effect to each of the provisions of the Convention, as well as the information requested in the report form, including statistics. The Committee also requests the Government to supply any regulations that have been adopted to apply the new Act.* The Committee hopes that the next report will also contain information on the measures adopted to give effect to the following provisions, on which the Committee has been commenting for a number of years.

*Articles 11 and 12 of the Convention.* In its previous report, the Government expressed the intention of ensuring free medical coverage for the spouses and children of insured persons, in accordance with these provisions of the Convention, either through the Ecuadorean Social Security Institute or other social security systems. *The Committee requests the Government to indicate whether the new legislation ensures such coverage and, if so, to please indicate whether medical insurance has been extended in practice to the members of the insured person's family and, if so, please provide the information requested by the report form under Article 12.*

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

## **France**

### **French Guiana**

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

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. *The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of French Guiana.*

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

#### **Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)**

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the

granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. *The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of French Guiana.*

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

### **Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)**

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. *The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of French Guiana.*

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

### **Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)**

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. *The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of French Guiana.*

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

## **French Polynesia**

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

The Committee observes that it has drawn the Government's attention for many years to the need to take certain measures in order to give effect to the Convention. It notes that the latest information from the Government shows that no progress has been made in the application of the Convention, either in law or in practice. Hence a system for the recording and reporting of occupational diseases has still to be established and, apart from the gaps in the legislation reiterated below, it appears that medical practitioners have little knowledge of cases which are likely to be recognized as being occupational in origin. In this respect, a medical inspector of labour is due to be recruited soon in order to conduct an information campaign for medical practitioners and occupational health physicians. In addition, the Social Welfare Fund is not bound by any deadline for investigating claims seeking the recognition of occupational diseases and appears to have recorded only five cases during the period covered by the last report. Finally, unlike metropolitan France, French Polynesia has no supplementary system for the recognition of occupational diseases enabling a disease which is not in the schedule to be recognized as such.

*In these circumstances, the Committee is bound to draw the Government's attention once again to the need to amend the schedules listing occupational diseases attached to Order No. 826/CM of 6 August 1990. It hopes that the Government will be in a position to describe in its next report the measures taken to ensure full conformity of the national legislation with the Convention on the following points: (a) the need for the pathological manifestations listed under each of the diseases included in the schedules of the national legislation to be indicative in nature; (b) the inclusion into these schedules of an item covering in general terms, as in the Convention, poisoning by all halogen derivatives of hydrocarbons of the aliphatic series and by all phosphorus compounds; and (c) the inclusion, among the trades likely to cause primary epitheliomatous cancer of the skin, of all processes involving the handling of products mentioned by the Convention. Please also supply any additional information with regard to the measures taken in the field of recording and recognizing occupational diseases in order to optimize the functioning of these procedures and enable requests for recognition lodged with the Social Welfare Fund to be examined promptly.*

### **Unemployment Provision Convention, 1934 (No. 44)**

For many years, the Committee has been drawing the Government's attention to the need for suitable measures to compensate the involuntary unemployed. Although the principle of assisting workers who have involuntarily lost their jobs was established by Act No. 86-845 of 17 July 1986, Decision No. 91-029 AT of 24 July 1991 on placement and employment, the procedures for applying it were not such as to enable compliance with the obligations arising from the Convention. In its last report, the Government indicates that the measures taken so far to implement the abovementioned

texts and which established work of general interest (CIG) has been revoked and replaced by National Law No. 2006-07 of 20 February 2006 introducing an “agreement for integration through activity” (CPIA) which, however, has the same features as the CIG and cannot, according to the Government’s report, legally be considered as establishing assistance for workers involuntarily deprived of their employment. Grant of the CPIA could in theory be prevented where funds are exhausted or unavailable or in the absence of a body to deal with jobseekers. Nevertheless, according to the Government’s report, all applications to the Employment, Training and Vocational Integration Service have in practice been met and there has been no request from the social partners for an unemployment insurance system to be established.

The Committee takes note of this information. It observes that, like the CIG, the CPIA is one of a set of employment assistance measures to facilitate recruitment, particularly of workers who have lost their jobs involuntarily, and to provide them with an allowance when they carry out an activity for a particular body (private sector company, branch of the administration, public establishment, commune or association). The Committee recalls that by accepting the obligations under the Convention, the Government committed itself to establish and implement an unemployment protection scheme that provides the involuntary unemployed with benefit, or an allowance, or a combination of benefit and allowance, as required by *Article 1, paragraph 1, of the Convention*. The Committee is bound to observe, as did the Government, that like the texts it replaced, National Law No. 2006-07 of 20 February 2006 establishing the CPIA does not establish a scheme that is in conformity with the Convention, i.e. either a compulsory insurance scheme, or a voluntary insurance scheme, or a combination of compulsory and voluntary insurance schemes, or any of these alternatives combined with a complementary assistance scheme. Furthermore, the Convention also provides that the scheme must cover all persons to which the Convention applies, namely all persons habitually employed for wages or salary, and must not allow any of these to be denied the benefit of the scheme because funds are lacking. The Committee would draw the Government’s attention once again to *Article 9* of the Convention, under which entitlement to receive benefit or an allowance may be made conditional upon the acceptance of employment on relief works organized by a public authority. It also points out that the Convention does not seek to protect all jobseekers, but only those who have lost their employment. Thus, *Article 6* of the Convention allows the right to receive benefit or an allowance to be made contingent on the completion of a qualifying period. ***In these circumstances, the Committee hopes that the Government will be able to reconsider this matter and that it will indicate the measures taken or envisaged to give full effect to the provisions of the Convention.***

## Martinique

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

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. ***The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Martinique.***

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

### **Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)**

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. ***The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Martinique.***

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

### **Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)**

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. ***The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Martinique.***

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

### **Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)**

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. *The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Martinique.*

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

## **Réunion**

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

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. *The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Réunion.*

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

### **Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)**

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. *The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Réunion.*

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

### **Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)**

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. *The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Réunion.*

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

### **Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)**

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 according to the information provided by the French Government, within the framework of its report concerning the application of Convention No. 35, the adoption of Act No. 98-349 of 11 May 1998, respecting the entry and residence of foreigners in France and the right of asylum, under which section 42 abolishes any condition of nationality for the granting of non-contributory benefits (benefits for disabled persons, supplementary old-age pensions, special old-age pensions) to foreigners who reside in France on a regular and permanent basis. *The Committee requests the Government to indicate whether this provision has been extended to the whole of the territory of Réunion.*

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

## St. Pierre and Miquelon

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

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

Ever since this Convention was declared applicable to St Pierre and Miquelon in 1974, the Committee has been drawing the attention of the Government to the need to supplement the legislation applicable to this territory in respect of the compensation of occupational diseases (including Decree No. 57245 of 24 February 1957 on the compensation and prevention of employment accidents and occupational diseases in overseas territories, as amended), so as to include a schedule of occupational diseases, in accordance with *Article 2 of the Convention*. Indeed, the orders envisaged in section 44 of Decree No. 57245 above, which were to enumerate the morbid manifestations of acute or chronic poisoning presented by workers habitually exposed to certain toxic agents, have never been issued.

The Committee notes that in its last report the Government confines itself to indicating once again that the system for the compensation of employment accidents and occupational disease is specific to the archipelago of St Pierre and Miquelon. It recalls that the Convention, in enumerating for each of the diseases appearing in the schedule annexed to *Article 2* the trades and industries liable to give rise to these diseases, is intended to relieve workers in the trades and industries concerned of the burden of proving that they have actually been exposed to the risk of the specific disease. *In these conditions, the Committee trusts that the Government will not fail to take all the necessary measures to supplement the legislation applicable to St Pierre and Miquelon as soon as possible with a schedule of occupational diseases, including at least the diseases enumerated in the schedule annexed to Article 2 of the Convention.*

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

## Greece

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1952)**

*Article 5 of the Convention. Payment of compensation in the form of periodical payments in the event of an industrial accident resulting in permanent incapacity.* For many years, the Committee has been drawing the Government's attention, in the context of Convention No. 102 and this Convention, to the need to re-establish the entitlement to long-term benefits at a reduced rate for victims of an employment injury resulting in incapacity of less than 50 per cent, as provided for by the previous legislation. Under the legislation that is currently applicable, sickness benefits are only paid for the first 720 days. In its latest report, the Government reiterates that this issue will be examined by the competent authorities with the participation of the social partners. It adds that the General Secretariat of Social Security has called for actuarial evaluations on this subject, with a view to bringing national legislation into conformity with the international conventions ratified by Greece. *With reference to its comments under Convention No. 102, the Committee notes the above information and hopes that the Government will keep it informed of any progress made in this respect. It also expresses the hope that, in this context, the Government will take all the measures necessary to give full effect to this provision of the Convention guaranteeing the payment of long-term benefits also to victims of occupational accidents with an incapacity of less than 50 per cent.*

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1952)**

*Article 2 of the Convention. Conformity of the national list of occupational diseases with the Schedule established by the Convention.* For many years, the Committee has been drawing the Government's attention to the need to complete the lists of occupational diseases contained in section 40 of the Regulations on occupational diseases of the Social Security Institute (IKA). In 1999, the Government indicated that, in view of the evolution of medical and technical knowledge, the IKA had decided to set up a committee to prepare a new and more extensive list of occupational diseases which would contain an *indicative* description and no longer a limitative list of the major pathological manifestations, as well as the main activities likely to cause them.

In its last report, the Government indicates that no new texts respecting the application of the Convention have been adopted during the period covered by the report. It nevertheless adds that all the bodies concerned acknowledge the fact that the list of occupational diseases currently contained in the above IKA regulations needs to be amended and completed. In this respect, a tripartite committee is to be entrusted with this mission in the framework of the Higher Labour Council.

While taking due note of this information, the Committee is bound to note that no progress has been achieved in the implementation of the Convention since the last report provided by the Government. Indeed, the establishment of a committee to prepare proposals for the amendment of the list of occupational diseases, already announced in the previous report, although within the framework of the IKA, has not yet been given effect. *Under these conditions, the Committee cannot but once again express the hope that the Government will, without further delay, take all the necessary*

*measures to bring the national legislation fully into conformity with Article 2 of the Convention, on which it has been commenting for many years. In this respect, the Committee recalls the issues addressed in its previous comments:*

- (a) *pathological manifestations due to poisoning by lead (section 1), poisoning by mercury (section 2) and poisoning by arsenic (sections 15 and 16) are listed limitatively, whereas the Schedule appended to the Convention is drafted in general terms and covers all diseases caused by these substances. The list of these pathological manifestations should therefore be made indicative, for example by adding the term "etc." at the end of the left-hand column of sections 1, 2, 15 and 16);*
- (b) *work liable to cause anthrax infection (section 25) should also include "loading and unloading or transport of merchandise" in general, as provided in the Convention;*
- (c) *the occupational diseases schedules should contain, as required by the Convention, a section on primary epitheliomatous cancer of the skin and the work liable to cause it.*

## 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.* 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.* 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 once again not been received. It must therefore repeat its previous observation, which read as follows:

1. *Article 8 of the Convention. 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.*

2. *Article 15(1).* In answer to the Committee's previous comments, the Government indicates that, 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.*

3. *Articles 19 and 20. 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.*

4. *Article 21. 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.*

5. *Article 22, paragraph 2. 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.*

6. 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.*

7. *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 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 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.* 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, paragraph 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. The Committee asks the Government to provide information on any compensation paid for injured persons or their dependants residing outside the country.***

***Article 2.*** 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 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) Nos 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) Nos 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.***

## Haiti

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

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 report provided by the Government in which it refers to certain measures taken to improve the functioning of the Insurance Office for Occupational Injury, Sickness and Maternity (OFATMA) and requests the technical assistance of the Office to assist in the establishment of a sickness insurance system. The Committee notes this request and recalls that the Office already carried out a certain number of activities in the country between 2000 and 2002, one of the aims of which was to support the Government in order to extend social protection to cover excluded groups and to organize training workshops linked to the promotion of various micro-insurance systems. ***The Committee hopes that the Office will continue to provide technical assistance in order to contribute to the establishment in the country of an operational sickness insurance system and gradually to help guarantee that the needs of the workers in the industry and agriculture sectors are adequately met.***

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

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

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

Please refer to the comments under Convention No. 24.

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

**Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1955)**

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 in its report to the effect that the OFATMA, the institution responsible for employment accident and occupational disease insurance, is endeavouring to make its inspection service more effective, to keep up to date a national register of protected workers, to gather reliable statistical data on the number and nature of the cases reported throughout the territory, to register the number of employment injuries and to take measures for their compensation.

The Committee takes due note of this information. *It requests the Government to continue providing information on the measures taken by the OFATMA to obtain reliable data on the number and nature of the occupational diseases reported. In these conditions, the Committee hopes that the Government will be in a position to provide statistical data in its next report on the number of workers engaged in the trades, industries and processes included in the Schedule to Article 2 of the Convention, the cases of diseases reported and the sums paid by way of compensation, in accordance with Part V of the report form.* Such data are indispensable to assess the manner in which effect is given to the Convention in practice.

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

## India

**Equality of Treatment (Social Security) Convention, 1962 (No. 118)**  
(ratification: 1964)

In reply to the Committee's observation of 2001, the report confirms that, apart from medical care, sickness benefit and maternity benefit, in respect of which India has accepted the obligations of the Convention, the Employee State Insurance Act 1948 also covers employment injury benefit, which was not initially included in the ratification of this Convention. Taking into account that this Act seems to fulfil the requirements of the Convention, the Committee invites the Government to consider the possibility of accepting the obligations of the Convention also in respect of the employment injury benefit (branch g), in accordance with the procedure laid down in paragraph 4 of Article 2. The Committee has taken note of the observations made by the Agricultural Workers Welfare Sangam in December 2003 concerning social security rights of workers in unorganized sectors and of the Government's reply to them received in September 2004, which does not call for further comments by the Committee under this Convention.

## Indonesia

**Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)**  
(ratification: 1950)

The Committee notes the information provided by the Government in its report and wishes to draw its attention to the following points.

*Article 1, paragraph 1, of the Convention. Equality of treatment.* The Committee notes that, following the repeal of Ministerial Regulation No. INS-02/MEN/1995 by Ministerial Decree No. KEP-132/MEN/1998, employers are no longer required to insure expatriates working in Indonesia for Indonesian companies through the social security scheme governed by Act No. 3/1992. In its report, the Government states that this decision was taken on account of the fact that these workers are insured against industrial accidents in their country of origin and are required to present, on their arrival in Indonesia, an original certificate showing that they benefit from the same social security coverage as that guaranteed by Act No. 3/1992 concerning employees' social security. The Government also states that these expatriate workers nonetheless have the possibility of being covered voluntarily by the Indonesian social security system for workers, governed by the above Act. While taking due note of this information, the Committee recalls that the Convention authorizes coverage by social security schemes of the State of origin only with respect to workers employed temporarily or intermittently where special agreements have been concluded with the countries concerned to this end. Workers employed otherwise than temporarily and intermittently as well as their dependants must, when they originate from

countries party to the Convention, necessarily be treated in the same manner as national workers and benefit from compulsory and not voluntary, affiliation to social security. *The Committee, therefore, asks the Government to indicate the measures taken or envisaged in order to ensure equality of treatment in case of occupational accidents and to give full effect to the Convention. It would also appreciate receiving copies of the special agreements concluded with countries party to the present Convention providing for the application of the legislation of the State of origin as regards accident compensation.*

## Iraq

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. *It hopes that a report will be supplied for examination at its next session and that it will contain full information on the manner in which the national legislation gives effect to each of the provisions of the Convention.*

## Italy

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1956)

In its previous observation, the Committee has invited the Government to consider accepting the obligations of the Convention in respect of *Part VI (Employment injury benefit)*, which contains provisions similar to Part VI of the European Code of Social Security ratified by Italy in 1977. In reply to this proposition, the Government states that the competent authorities were consulted and expressed themselves in favour. Consequently, the Ministry of Labour and Social Policy will commence proceedings for ratifying *Part VI of the Convention* as soon as possible. *The Committee notes this statement with interest and would like to be kept informed of the progress made in this respect.*

The Committee further notes that, while Italy has accepted the obligations of the Convention only for *Parts V, VII and VIII*, the report also contains detailed statistics for the calculation of the level of the benefits with respect to other non-accepted Parts of the Convention (*Parts III, IV, IX and X*), which show that the replacement level prescribed by the Convention is attained. The information supplied by the Government in its 22nd annual report on the application of the European Code of Social Security confirms this conclusion. In this respect the Committee notes that the Group of Consultants for the application of Article 76 of the European Code of Social Security has pointed out in its latest report that Italy is in a position to accept Parts II, III and IV of the Code, which contain provisions similar to the corresponding Parts of the Convention. *Highlighting the importance of enhanced coordination between the obligations assumed by the Contracting Parties under European and ILO social security standards, the Committee would therefore ask the Government to consider the possibility of accepting the obligations of the Convention in respect of these Parts as well.*

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1967)

In 2006, the Government was requested to submit a detailed report on the application of the Convention for the previous five-year period in accordance with the report form adopted by the Governing Body of the ILO. The Committee notes that the report received in 2006 contained only the Government's reply to the Committee's previous comments. It hopes that a detailed report will be supplied for examination at the next session of the Committee in November–December 2008 and that it will also contain the Government's reply to the observations of the Italian Confederation of Labour (CGIL), which were attached to the report.

[The Government is asked to report in detail in 2008.]

## Japan

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1928)

The Committee notes the information, including statistics, supplied by the Government on the manner in which national law and practice give effect to the Convention. It also notes the comments made by the Japanese Trade Union Confederation (JTUC–RENGO) on the subject and also the Government's reply to these comments.

*Part V of the report form. Application of the Convention in practice.* The Committee notes that the national legislation concerning industrial accident compensation applies, in conformity with the provisions of the Convention, to both nationals and foreigners who work in Japan. In its comments concerning the application of the Convention, JTUC–RENGO refers to problems connected with compensation for foreign workers injured in industrial accidents who are working without a work permit and who, as a result of pressure from their employers or out of fear of expulsion, do not seek compensation or the coverage of medical costs. Moreover, the abolition in 2006 of the obligation to report on

compensation paid to such workers in cases of industrial accidents has made it difficult to evaluate the situations concerned. The abovementioned organization also refers to a practice whereby vocational and technical training programmes are not used for their intended purposes and foreign apprentices are employed covertly without being insured against industrial accidents. In its reply to the aforementioned comments, the Government confirms that the reporting procedure concerning cases of compensation to the victims of industrial accidents who could be considered as illegal workers was abandoned in 2006. Nevertheless, in view of the situation of these workers, the Government indicates that it has decided to resume the collection of information in this field by calling for reports with a retroactive effect since 2006.

*The Committee notes this information and would be grateful if the Government would continue to keep it informed of the manner in which national law and practice give effect to the Convention. It also requests the Government to supply further details in its next report on the allegations of covert employment affecting foreign apprentices who thus may be deprived of the insurance coverage in respect of industrial accidents, and, also, if applicable, on any measures taken or contemplated in order to combat this practice.*

### **Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1976)**

The Committee notes the information provided by the Government in its report and, in particular, that concerning the application of *Article 29, paragraph 2, of the Convention*, which was the subject of its direct request of 2002. It also notes the comments made by the Japanese Trade Union Confederation (JTUC-RENGO) and the Government's reply to them attached to the report.

The JTUC-RENGO alleges in particular that the number of employees protected by the health insurance and the pension insurance is decreasing year after year due to the increasing number of non-regular workers, including part-time and temporary workers, who are exempted from coverage when working less than three-quarters of the normal working hours. In 2006, non-regular workers made up one third of all employees in Japan. The JTUC-RENGO called on the Government to relax the exemption criteria so that all workers, regardless of being regular or non-regular, are covered by the insurance schemes. In reply, the Government indicates that in 2007 it has submitted to the Diet the Bill for unifying employees' pension schemes in order to extend the coverage, inter alia, to persons who work 20 or more scheduled working hours. The Bill stipulates however that small and medium-sized enterprises with 300 or less employees will be allowed an exemption from the new criteria as a measure to moderate the impact on business management. *The Committee would like the Government to specify classes of employees prescribed under Articles 15(a) and 27(a) of the Convention that are covered by the health insurance and the pension insurance schemes.* It notes that the statistics on the number of employees protected and the total number of employees in the country given in the report refer under *Article 15(a)* to figures of 2005-06 and under *Article 27(a)* to figures of 1999-2000, which do not correspond to the data for the same period given in the previous report of the Government. *The Committee would therefore ask the Government to provide updated statistics required in Title I under Article 76 of the Convention for the same time period indicating the source of data. With regard to the Bill referred to by the Government, it would like to receive a copy of it, once adopted by the Diet, together with the translation into English of the relevant provisions concerning coverage. In addition, the Committee would like the Government to indicate how many workers are employed in the small and medium-sized enterprises with 300 or less employees, which might be excluded from the health and pension insurance coverage under the new Bill.*

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1974)**

The Committee notes the Government's report and the comments made by the Japanese Trade Union Confederation (JTUC-RENGO) concerning the application of Conventions Nos 19 and 121.

*Articles 10, paragraph 2, and 26, paragraph 1, of the Convention. Provision of medical and rehabilitation services.* According to the comments on Convention No. 121, on 30 March 2004, the Ministry of Health, Labour and Welfare announced a "reorganization plan for occupational injury hospitals" to close or consolidate them. The Confederation states that these hospitals, which provide preventive care, treatment and rehabilitation, and support for maintaining health at the workplace, should not be closed or consolidated, but be further expanded. The Committee notes from the Government's reports that the number of specialized occupational injury hospitals established and operated in the country under the workers' accident insurance compensation scheme has decreased from 37 in 1993 to 33 in 2007, while the number of new recipients of insurance benefits in the period 1999-2005 has not (over 600,000 per year). The Committee also notes from the Government's latest report that 19 human resources development centres have been established for providing vocational training to disabled persons. *In view of the above, the Committee would like the Government to explain its policy as regards the development of occupational injury medicine and rehabilitation services, in particular in the light of the requirements contained in Articles 10(2) and 26(1) of the Convention.*

*Article 27. Equality of treatment of non-nationals.* In its comments concerning Convention No. 19, the Confederation indicates that obligatory reporting of accident compensation given to undocumented foreign workers was abolished in 2006 in accordance with the notice concerning the "simplification of reporting concerning accident compensation given to illegal foreign workers". As a result, it has become difficult to grasp current conditions, but there

seem to be many cases where foreign workers without a work permit fail to file claims for compensation because of lack of information on accident compensation, fear of being deported and undue pressure from their employer. The Confederation also states that many trainees who come to Japan under industrial training and technical internship programmes are in reality working without being legally treated as workers or covered by the Workmen's Accident Compensation Insurance Law. ***Taking into account that this Law covers both Japanese and foreign workers without distinction, the Committee asks the Government to explain how it is being applied with respect to foreign workers in the situations referred to by the Japanese Trade Union Confederation.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Kenya

### ***Workmen's Compensation (Accidents) Convention, 1925 (No. 17)*** ***(ratification: 1964)***

The Committee notes the Government's information that there has been no change in the legislation on workmen's compensation in the period covered by the report. The Government also indicates that it is enclosing a copy of the Work Injury Bill currently before the competent authority, which is to replace the Workmen Compensation Act (Cap. 236). However, the text was not included with the report received by the Office.

The Committee has been raising several issues about application of the Convention for many years, which is why the case of Kenya was examined by the Conference Committee in 1994. On that occasion, the Government undertook to take the necessary steps to ensure that full effect was given to the Convention in the national legislation. The Committee is nonetheless bound to note that, since then, it has examined a series of bills and has several times commented that they needed amending in order to give full effect to the Convention. Despite earlier assurances by the Government, none of the bills has as yet been enacted and promulgated. ***In these circumstances, the Committee can but renew its hope that the Government will be in a position to provide in its next report information on progress made in the enactment of new legislation on workmen's compensation, and to send a copy of it to the Office. It hopes that the new legislation will give full effect to all provisions of the Convention and particularly to Article 5 (principle of compensation payable to the injured workman or his dependants in the form of periodical payments), Article 9 (entitlement to medical aid free of charge and to such surgical and pharmaceutical aid as is recognized to be necessary in consequence of accidents), Article 10 (supply and normal renewal, by the employer or insurer, of such artificial limbs and surgical appliances as are recognized to be necessary), and Article 11 (guarantees in the event of the insolvency of the employer or insurer), to which the Committee referred in its previous comments. Lastly, it would point out that the Government may seek technical assistance from the Office in setting up a new system of insurance for workmen's compensation.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Lebanon

### ***Workmen's Compensation (Accidents) Convention, 1925 (No. 17)*** ***(ratification: 1977)***

For many years, the Committee has been drawing the Government's attention to the need to amend Legislative Decree No. 136 of 1983 which, while awaiting the implementation of the employment injury branch of the Social Security Code of 1963, establishes the legal framework for compensation of employment injury. The comments made in this respect relate to bringing the national legislation into conformity with the following provisions of the Convention: *Article 2* – the necessity to make the above Legislative Decree applicable to apprentices; *Article 5* – the necessity to provide in the event of employment injury that the compensation shall be paid in the form of periodical payments to the injured worker or his or her dependants, provided that it may only be paid in the form of a lump sum where there are guarantees that it will be properly utilized; *Article 6* – the payment of compensation in case of temporary incapacity throughout the duration of the invalidity, that is until the worker is cured, or up to the date of the commencement of the periodical payments for permanent incapacity; *Article 7* – necessity to provide additional compensation where the worker requires the constant help of another person; *Article 8* – provision for review of the periodical payments either automatically or at the request of the beneficiary in the event of a change in the condition of the worker; and *Article 11* – making provision for guarantees in the event of the insolvency of the insurer, inter alia.

In its previous report provided to the Office in 2003, the Government indicated the existence of a draft text which would give effect to certain provisions of the Convention (*Articles 2 and 5*). However, the Government indicates in its report provided in 2006 that the text has not yet been approved. It nevertheless reiterates its desire to amend Legislative Decree No. 136 of 1983 with a view to bringing the national legislation into full conformity with the above provisions of the Convention.

The Committee takes due note of this information. ***As the points referred to above have been the subject of its comments for many years, the Committee hopes that the Government will be in a position to indicate the progress achieved in its next report in giving full effect to the Convention. The Committee would also be grateful if the***

*Government would keep it informed of all measures adopted or envisaged in relation to the implementation of the employment injury branch of the Social Security Code.*

## Libyan Arab Jamahiriya

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1975)

The Committee notes the information communicated by the Government in its report. It notes with interest the information provided on the application of *Part II (Medical care), Article 10, paragraph 1*, and of *Part VIII (Maternity benefit), Article 50 of the Convention*. It further notes the Government's request to provide it with further technical assistance to formulate the legislation and to bring such legislation as well as the decisions taken by the Government in conformity with ILO social security Conventions. It hopes that, as a result of this assistance, the Government will take the necessary measures to give full effect in law and practice to the provisions of the Convention on which it has been commenting and that it will provide information in its next report on the following points.

*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 is addressing a request directly to the Government on other points.

[The Government is asked to report in detail in 2009.]

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1975)

The Committee notes the Government's request to provide it with further technical assistance to formulate the legislation and to bring such legislation and the Government's decisions in conformity with ILO social security Conventions. It notes, however, that the Government's report contains no reply to most of the points raised by the Committee in its previous observation. ***The Committee hopes that, as a result of the assistance of the ILO, the Government will take the necessary measures to give full effect in law and practice to the provisions of the Convention on which it has been commenting.***

*Article 3, paragraph 1, of the Convention (in conjunction with Article 19).* (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, paragraph 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.* 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 is addressing a request directly to the Government on other points.

[The Government is asked to report in detail in 2009.]

### ***Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1975)***

The Committee refers the Government to its direct request and notes the information provided in its report. It notes with interest the Government's request to provide it with further technical assistance to formulate the legislation and to bring such legislation, as well as the decisions taken by the Government, into conformity with ILO social security Conventions. ***It hopes that, as a result of this assistance, the Government will take the necessary measures to give full effect in law and practice to the provisions of the Convention on which it has been commenting.***

The Committee is addressing a request directly to the Government on other points.

[The Government is asked to report in detail in 2009.]

### ***Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)*** ***(ratification: 1975)***

The Committee notes the information communicated by the Government in its report. It notes the Government's request to provide it with further technical assistance to formulate the legislation and to bring such legislation, as well as the decisions taken by the Government, into conformity with ILO social security Conventions. It also notes with interest the information provided on the application of *Part IV (Survivors' benefit), Article 24, paragraph 2, of the Convention*. ***It hopes that, as a result of this assistance, the Government will take the necessary measures to give full effect in law and practice to the provisions of the Convention on which it has been commenting.***

The Committee is addressing a request directly to the Government on other points.

[The Government is asked to report in detail in 2009.]

### ***Medical Care and Sickness Benefits Convention, 1969 (No. 130)*** ***(ratification: 1975)***

The Committee refers the Government to its observation and notes the information provided in its report. It notes the Government's request to provide it with further technical assistance to formulate the legislation and to bring such legislation, as well as the decisions taken by the Government, into conformity with ILO social security Conventions. It also notes with interest the information provided on the application of *Part II (Medical care), Article 13 of the Convention*. ***It hopes that, as a result of this assistance, the Government will take the necessary measures to give full effect in law and practice to the provisions of the Convention on which it has been commenting.***

The Committee is addressing a request directly to the Government on other points.

[The Government is asked to report in detail in 2009.]

## **Malaysia**

### **Sarawak**

### ***Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)*** ***(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:

In its previous comments, the Committee requested the Government to provide information on the measures taken to ensure that foreign workers (and their dependants) who are nationals of countries that have ratified the Convention receive the *same compensation* as that granted to national workers in the event of occupational accidents. The Government indicates in its last report that, while it understands the Committee's concern, it is of the view that the current arrangement of separate workers' compensation systems for local and foreign workers appears to function in a satisfactory manner and that the compensation payable to foreign workers is not inferior to that payable to Malaysian workers. The Government adds that a policy decision needs to be taken before the issue of non-conformity with the Convention is addressed.

The Committee regrets to note that the Government has not taken any measures to bring the national legislation into conformity with the Convention. It reiterates that the national legislation, which establishes, in case of employment injury, the principle of differing treatment between national and foreign workers is not consistent with the Convention. In Malaysia, in the event of an employment accident, benefits are provided through two distinct national laws. By virtue of the Employee's Social Security Act, 1969, national workers are entitled to a pension, whereas according to the Workmen's Compensation Act, 1952, foreign workers are entitled to a lump-sum payment. Furthermore, the conditions governing affiliation to insurance against employment accidents differ between national workers (compulsory insurance when earnings are below RM3,000) and foreign workers (exclusion from compulsory insurance of non-manual workers earning over RM500).

The Committee is therefore bound once again to recall that, by virtue of *Article 1, paragraphs 1 and 2, of the Convention*, each Member which ratifies the Convention undertakes to grant, without any condition as to residence, to the nationals of any other Member which has ratified the Convention who suffer employment injury in its territory, or to their dependants, the *same treatment* as that granted to its own nationals in respect of workers' compensation. The Committee considers that, since the compensation payable to foreign workers under the Workmen's Compensation Act is not considered to be inferior to that payable to national workers, all workers, whether they are nationals of Malaysia or foreign nationals, could be allowed to decide which of the two systems they prefer for their own personal coverage. Such a measure would be consistent with the fundamental principle established by the Convention, according to which States parties must implement the *principle of equal treatment* in respect of workmen's compensation between their own nationals and foreign workers (nationals of any other Member which has ratified the Convention), and have to ensure that it is possible for foreign workers or their dependants who suffer employment injury and return to their countries of origin to receive the payments abroad under special arrangements. ***The Committee accordingly expresses the firm hope that the Government will re-examine the matter and provide information in its next report on the measures taken or envisaged to bring the national law and regulations into conformity with the Convention. It also requests the Government to provide detailed statistical information on the number and nationalities of foreign workers employed in the country.***

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

## Mauritania

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1968)

With reference to its previous comments, the Committee notes the report provided by the Government in October 2006 according to which, since 1 January 2006, the Government has made a 15 per cent increase for all civil and military pensioners and has set the minimum wage (SMIG) at 21,000 UM since July 2006, which has resulted in an increase in minimum pension rates. *As these increases do not appear to be reflected in the calculations of the level of benefits made in the report, the Committee would be grateful if the Government would indicate in its next report which benefits are covered by the increase, their new minimum amounts and their replacement rate in relation to the reference wage of an ordinary adult male labourer determined in accordance with the methodology envisaged in Article 66 of the Convention. With regard to the extent to which the total amount of family benefit attains the level prescribed by Article 44 of the Convention, the Committee requests the Government to calculate it on the basis of the reference wage referred to above or the amount of the SMIG if it corresponds to the wage actually received by an ordinary labourer. Finally, the Committee once again requests the Government to provide statistical data on changes in the cost-of-living index, inflation and earnings in the country since the last revision of the SMIG in 1998, and on the number of employed persons protected by the social security scheme and by the special schemes in relation to the total number of employed persons in the country.*

Furthermore, the Committee takes due note of the fact that the Government is requesting the technical support of the International Labour Office in the context of the application of the Convention. *In the meantime, the Committee would be grateful if the Government would indicate the extent to which the recommendations made by the ILO in 2002 in the context of the technical cooperation project on the actuarial evaluation of the scheme administered by the National Social Security Fund have been given effect.* (Actuarial evaluation of the scheme administered by the Social Security Fund as of 31 December 2000, Geneva, 2002, X. (ILO/RP/Mauritanie/R.15), ISBN 92-2-13001-4.)

[The Government is asked to reply in detail to the present comments in 2009.]

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1968)

*Article 5 of the Convention.* Referring to section 66(2) of the Act of 3 February 1967 which provides that benefits are suspended where the beneficiary is not resident in Mauritania, except in the case of reciprocity agreements or international conventions, the Committee previously requested the Government to indicate the manner in which, in accordance with *Article 5, paragraph 1*, of the Convention, the payment of invalidity, old-age and survivors' benefits and employment injury pensions is guaranteed in practice in the case of residence abroad, both to Mauritians and to the nationals of countries which have accepted the obligations of the Convention for one or more of these branches of social security. In its report in 2001, the Government indicated that there are two methods for the payment of benefits in the case of residence abroad: by bank transfer or physical presence. In its last report received in October 2006, the Government states that, for a beneficiary whose country of origin has signed a bilateral or multilateral agreement with Mauritania, physical presence for opening the entitlement to benefits and for setting up a bank transfer of the benefits is not required. However, for a foreign national whose country of origin has not ratified a bilateral or multilateral agreement with Mauritania, even though physical presence is not compulsory for the opening of entitlement to benefits, it is required at least once a year for the payment of benefits. A beneficiary residing in a country which does not have a bilateral agreement with Mauritania can submit an application for a benefit through any channel (by post, through consular channels or through a social security administration), but for the payment of benefits physical presence in Mauritania, accompanied by a certificate of existence, is compulsory.

The Committee takes due note of these explanations. It understands, therefore, that beneficiaries whose country of origin has ratified a bilateral or multilateral agreement with Mauritania can receive benefits abroad via bank transfer, whereas beneficiaries whose country of origin has not ratified such an agreement with Mauritania are obliged to go to Mauritania at least once a year for the payment of benefits. The Committee also notes that, among the other 37 countries which have ratified Convention No. 118, Mauritania has only signed the bilateral social security agreement with France. *With regard to the nationals of the remaining 36 countries which have not ratified a bilateral agreement with Mauritania, the Committee asks the Government to indicate whether they have to be physically present in Mauritania at least once a year for the payment of benefits and, if so, on the basis of which regulations. Please indicate also whether the same requirements concerning the physical presence of beneficiaries in Mauritania for opening the entitlement to benefits as well as for benefit payments are applicable to Mauritanian nationals residing abroad and in particular in countries which have not ratified a bilateral agreement with Mauritania.*

## Mexico

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1961)

The Committee takes note of the detailed report sent by the Government. It notes the Government's information on the application of *paragraph 1, Article 10, Part II (Medical care), of the Convention*. The Committee also notes the communications from the following workers' organizations: the Trade Union of Workers of the National Autonomous University of Mexico; the National Trade Union of Workers of the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food; the Single Trade Union of Workers of the Nuclear Industry; the Independent Trade Union of Workers of the Autonomous Metropolitan University; the National Union of Education Workers (14 sections); the Trade Union of the National Council for Culture and the Arts; the Administrative Union of the Autonomous University of San Luis Potosí. The above organizations allege breaches of Convention No. 102 arising from the adoption of a new Act on the State Workers' Social Security and Services Institute (ISSSTE). The Committee also takes note of the detailed information communicated by the Government on 27 November 2007, in reply to the comments made by the trade unions. It will examine the abovementioned communications at its next session.

#### **State workers' scheme (ISSSTE)**

The Committee notes the entry into force of the new ISSSTE Act, published in the *Diario Oficial de la federación* (Official Journal) of 31 March 2007. Like the 1997 Social Security Act, the new ISSSTE Act associates the private sector in the achievement of the objectives pursued by social security. It groups the 21 branches of insurance, services and benefits contemplated in the old Act into four branches similar to those established in the 1997 Social Security Act and a section on social and cultural services: retirement, unemployment among older workers and old age; invalidity and life; occupational risks, and health. The new Act introduces major reforms, particularly in pensions. An individual capitalization system (defined contributions) with a personal account for every member of the scheme replaces the former pay-as-you-go system (defined benefits). Workers affiliated to the ISSSTE are now required to have an individual account in the PENSIONISSSTE or, if they so wish, in a pension fund management company (AFORES). Individual accounts are funded by contributions from the worker and from state departments and bodies. Under the Social Security Act, the AFORES are responsible for investing the funds deposited in the individual accounts through investment companies specializing in the placement of pension funds (SIEFORES). The latter also need authorization from the Commission on the Retirement Savings System, which is likewise responsible for supervising their activities and those of the AFORES. The companies charge commissions, which are deducted from the workers' personal accounts. Upon retirement, workers may convert the balance of their individual accounts into a pension in the form either of a life annuity or of programmed withdrawals. The resources accumulated in the personal accounts are also used to finance invalidity and survivors' benefits. In certain circumstances, workers may make withdrawals from their personal accounts for specific purposes (marriage, unemployment, etc.). The State guarantees a minimum pension equal to 3,034 pesos and 20 centavos (3,034.20) (section 92, ISSSTE Act).

Under the new retirement pension system, workers in activity may opt to remain in the old, defined-benefit system or to switch immediately to the new, defined-contribution system, while workers entering the labour market automatically join the new system. The new ISSSTE Act also provides for the transfer of savings accumulated under the ISSSTE Act or the Social Security Act. For workers opting to switch to the new system and workers entering the labour market, the new ISSSTE Act provides for the transfer of accumulated savings between the IMSS and the ISSSTE. ***The Committee asks the Government in its next report to provide detailed information, including statistics, on the extent to which the new legislation gives effect to each provision of the Convention, in accordance with the report form on the Convention. The Government is also asked to provide information on the procedure that applies in respect of workers opting to remain in the old system who have both acquired rights and savings in the IMSS. The Committee hopes that the next report will also contain information on the measures adopted to give effect to the following provisions of the Convention.***

*Part III. Sickness benefit. Articles 17 and 18 of the Convention.* The Committee notes that, under section 37 of the new Act, workers prevented by sickness from carrying out their jobs shall be entitled to leave with pay or half pay from the department or body for which they work, corresponding to length of service. Under this provision, depending on length of service (from less than one to over ten years) they may be granted sick leave for non-occupational sickness, for periods ranging from 15 days with full pay and 15 days with half pay, to 60 days with full pay and 60 days with half pay. Upon expiry of the leave with half pay, they are entitled to a cash subsidy equal to 50 per cent of the basic wage at the onset of the incapacity. ***Since, under section 17 of the ISSSTE Act, the basic wage is taken to calculate contributions, the lower limit being the minimum wage and the upper limit ten times the minimum wage, the Committee asks the Government to indicate the components of the basic wage.***

*Part V. Old-age benefit. Articles 28, 29 and 30 of the Convention.* (a) The Committee recalls that, under the provisions of the Convention, read in conjunction with *Part XI (Standards to be complied with by periodical payments)*, the level of the old-age benefit must attain 40 per cent of the reference wage for a standard beneficiary who has completed a qualifying period consisting either of 30 years of contributions or employment or 20 years of residence. This level must be guaranteed throughout the contingency, regardless of the type of pension chosen (life annuity or programmed

retirement). The Committee observes that, for persons fulfilling the requirements for eligibility to the old-age pension established in the legislation, the amount of this pension appears not to be determined in advance but to depend on the capital saved in the workers' personal accounts, particularly the return thereon. However, pursuant to section 92 of the ISSSTE Act, for workers meeting the requirements on age and qualifying period laid down in section 89 of the Act, the State provides a "guaranteed pension" in a monthly amount of 3,034 pesos and 20 centavos (3,034.20), which will be updated once a year, in February, on the basis of the yearly change in the National Consumer Price Index. ***In these circumstances, the Committee expresses the hope that in its next report the Government will provide the statistical information required in the report form under Article 66 of the Convention, to enable the Committee to ascertain whether, in practice, the minimum amount of the old-age pension attains the percentage prescribed by the Convention.***

(b) ***The Committee requests the Government to indicate how it ensures that effect is given to Article 30 (throughout the contingency) in respect of the "programmed retirement" scheme provided for in section 159 of the Social Security Act. Please indicate in particular whether the beneficiary is entitled to payment of the "guaranteed pension" established in section 91(II) of the ISSSTE Act when the capital saved in the individual account is exhausted.***

(c) The Committee notes that, under section 89 of the ISSSTE Act, workers are entitled to an old-age pension when they reach the age of 65 and have completed a minimum qualifying period of 25 years of contributions. ***The Committee asks the Government to indicate in its next report how effect is given to Article 29, paragraph 2(a), of the Convention, under which a reduced old-age pension must be secured as a minimum for a protected person who has completed, prior to the contingency, a qualifying period of 15 years of contributions or employment.***

***Part VI. Employment injury benefit. Articles 36 and 38.*** The Committee notes that, according to section 62(III) of the ISSSTE Act, in the event of total incapacity, the worker shall receive a pension until the age of 65 years by taking out pension insurance that pays him income equal to the basic wage he received at the onset of the risk, regardless of his length of service (section 63 of the Act). Upon expiry of the pension insurance, the worker will receive an old-age pension if he meets the corresponding requirements, otherwise he will receive the guaranteed pension. The Committee takes note of this information. It points out to the Government that, according to the Convention, the benefit for permanent total incapacity (Article 36) shall be a periodical payment that must be granted throughout the contingency (Article 38). Unlike Article 58 (Part IX. Invalidity benefit), Article 38 of the Convention does not allow the benefit for permanent total incapacity to be replaced by old-age benefit. ***The Committee points out that replacement of permanent incapacity benefit deriving from an occupational risk by an old-age pension would be compatible with the Convention only if the amount of the latter is at least equal to that of the former, and provided that it is not subject to any qualification requirement. It accordingly asks the Government to indicate the measures it has in mind to ensure compliance with the Convention.***

***Part XI. Standards to be complied with by periodical payments. Employment injury benefit, Article 36, invalidity benefit, Articles 56 and 57, and survivors' benefit, Articles 62 and 63. The Committee would be grateful if the Government would provide all statistical information relating to calculation of the benefits referred to under Article 65 (Titles I, II and IV).***

The Committee notes that, according to section 121 of the Social Security Act, the invalidity pension for workers meeting the qualification requirements in section 118 is equal to a basic amount of 35 per cent of the average basic wage of the year immediately preceding the date of the onset of the workers' invalidity. The amount shall not be less than the pension established in section 170 of the Social Security Act at the date of entry into force of the ISSSTE Act and it shall be updated annually, in February, on the basis of the updated adjustment of the Consumer Price Index. As to the amount of the survivors' benefit, the members of the insured person's family, in the order laid down in section 131 of the ISSSTE Act, are entitled to a pension equal to 100 per cent of the pension that would have been payable to the worker or of the pension he was receiving. The Committee reminds the Government that, under the abovementioned provisions of the Convention, read together with the provisions of Part XI (Standards to be complied with by periodical payments), invalidity benefit, including the family allowances paid to the standard beneficiary (man with wife and two children) must attain at least 40 per cent of the former earnings and the family allowances paid to the beneficiary when he was in activity. As to the amount of the widow's pension, it must likewise attain, for a standard beneficiary (widow with two children), 40 per cent of the previous earnings of the breadwinner (including the family allowances paid both during employment and during the contingency). ***In view of the fact that, under section 121 of the ISSSTE Act, invalidity benefit may not be less than the "guaranteed pension" established in section 170 of the Social Security Act, equal to the general minimum wage for the Federal District, the Government may deem it appropriate to avail itself of the provisions of Article 66 of the Convention. The Committee asks the Government in its next report to provide the statistical information requested by the report form under this provision of the Convention (Titles I, II and IV). It also asks the Government to indicate whether the guaranteed pension also applies to the pension arising out of death and, if so, under which provisions.***

***Part XIII. Common provisions. Administration and oversight of the social security system. Articles 71 and 72.*** The Committee notes that, according to section 14 of the ISSSTE Act, the Institute shall compile and classify information on insured persons with a view to drawing up pay scales, working out length of services averages, drawing up mortality and morbidity tables and, in general, compiling the necessary statistics and *actuarial calculations* to achieve and maintain the financial equilibrium of the resources and to comply adequately and efficiently with the insurance schemes, benefits and services that it is required to administer by law. The Committee also notes that, under section 5 of the ISSSTE Act, the ISSSTE is responsible for the management of the insurance schemes, benefits and services established in the law and of

the Housing Fund, the PENSIONISSSTE, its delegations and other decentralized bodies. *The Committee deems it appropriate to stress that there needs to be an overall actuarial evaluation of the entire social security system, which should henceforth include the part corresponding to the state workers' scheme. It asks the Government to state whether the necessary actuarial studies and evaluations have been carried out to ensure the financial equilibrium of the new system and, if so, to provide the results thereof.*

### General scheme (IMSS)

1. *Part II. Medical care.* In its previous comments, the Committee noted that, pursuant to section 89 of the Social Security Act, the Mexican Social Security Institute (IMSS) may provide the medical care for which it is responsible according to the three following procedures: (i) directly, through its own personnel and facilities; (ii) indirectly, by means of agreements with other public or private care providers; or (iii) indirectly, through the conclusion of agreements with enterprises that have their own medical services. The Government provides information on the content of the agreements used by the IMSS for the provision of medical care, and indicates that the provision of medical care and the payment of subsidies for temporary incapacity to work, which under the terms of the agreement is the responsibility of the enterprise, shall be subject to inspection and monitoring by the IMSS, regardless of the obligation they both have. Where the Institute finds defects in the provision of benefits by the enterprise, and these are confirmed as a result of the relevant investigations, it shall order and execute suitable measures to remedy them under the terms of the Social Security Act and its applicable regulations. The Government adds that since at present there are no agreements on the transfer of responsibility for care provision with reimbursement of contributions, it has no inspection reports on the matter. *The Committee takes note of this information. It asks the Government to keep it informed of any such transfer agreements concluded.*

2. *Part V. Old-age benefit. Articles 28, 29 and 30 of the Convention.* In its previous comments, the Committee noted that for persons who fulfil the qualifying conditions for an old-age pension as set out in the legislation, the amount of the pension is not determined in advance, but depends on the capital saved in the workers' personal accounts and particularly the return on the capital, which has to be entrusted to the management of a retirement fund management company (AFORE) chosen by the worker. However, under section 170 of the Social Security Act, the State guarantees to workers who fulfil the age conditions and qualifying periods set out in section 162 of the Social Security Act, the provision of a "guaranteed pension", the amount of which is equal to the general minimum wage for the Federal District. The Government indicates in this connection that the guaranteed pension is increased annually, in February, in accordance with the previous year's variation in the National Consumer Price Index, the aim being to maintain the purchasing power of the pension in line with trends in the prices of goods and services. The Committee takes note of this information. It also notes the detailed statistics provided in the manner indicated in the report form approved by the Governing Body under *Article 66* of the Convention, *Titles I and III*. The Committee notes that, according to the above information, the amount of the minimum guaranteed pension for 2006 is equal to 42.95 per cent and not 30.82 per cent, as indicated in the previous report, of the wage of an ordinary adult male labourer selected in accordance with the provisions of *Article 66* of the Convention. *The Committee requests the Government in its next report to provide information on recent increases in amounts of pensions as a consequence of variations in the National Consumer Price Index, together with particulars, for one and the same period, of the cost of living index and the amount of benefits.*

3. (a) In its previous comments, the Committee asked the Government to provide information, including statistics and, where appropriate, reports of the supervisory bodies, indicating the average percentage which has in practice been used for the payment of commissions – on both contributions and capital – since the entry into force of the Act. In its report, the Government indicates that, in addition to the tripartite contribution, the Government makes a social contribution, which is a fixed amount for each day worked (2.92 pesos in April 2007) equivalent to roughly 2 per cent of the wage of an average worker. As to the average of commissions paid in practice, which includes commissions on contributions and capital, it has amounted to 1.58 per cent from the start-up of the system to the end of 2006. The highest such percentage – 1.81 per cent – was reached in 2000 and the lowest – 1.38 per cent – in 2006. In percentage terms, the drop in commissions in that period amounted to 24 per cent. The Committee takes note of this information. It notes in particular that the information on receipts from AFORES' commissions refers to the annual wage bill. *The Committee accordingly asks the Government to provide statistical data on the annual receipts from commissions in relation to the amount of the contributions devoted to old-age insurance. It would also be grateful if the Government would provide information on the commissions that an ordinary unskilled worker has had to pay since the system came into operation.*

(b) In its previous comments, the Committee noted that the basic capital for the provision of invalidity, life and employment injury pensions which is transferred to the insurance company for the provision of a life annuity, is calculated in accordance with the mortality tables for invalids by age and by sex. It asked the Government to provide information, disaggregated by age and by sex, on the amount of the commissions charged by the AFORES and insurance companies in respect of life annuities. The Government indicates in this regard that insurance companies charge no commission at all on the pension received or the funds accumulated by the pensioner. Under the Mexican pension scheme, commissions are charged by the AFORES while the savings are being accumulated in the personal account, but once the pensioner fulfils the legal requirements for receiving it, the life annuity is bought in the insurance sector. The price of the life annuity includes a surcharge of 1 per cent over the price of the net premium to cover administration and purchase costs, and a 2

per cent surcharge as a safety margin for any deviations in the accident rate. The Government also provides information on the commissions that the AFORES charge both on capital and on contributions. *The Committee wishes to point out that this information does not allow an assessment of the accumulated impact of the two commissions for an average unskilled ordinary labourer. It accordingly asks the Government to provide such information. The Committee also notes that the IMSS does not have information disaggregated by age and sex on the amount of the commissions charged by insurance companies (life annuities) during the passive phase. It observes that information of this kind is of the utmost importance in view of the fact that the system is based on periods of saving and periods of use which are reflected in the personal account and which vary considerably depending on the sex and age upon the entry into force of the Act. The Committee therefore hopes that the Government will take all necessary steps to compile and send the information requested.*

As to the basic capital transferred to insurance companies, the Government states that, under the Federal Labour Act (LFT), the benefits provided for workers in respect of occupational risks include an obligation on employers to pay an indemnity, which is granted once only (sections 487(IV), 491 and 492). The Social Security Act (LSS) establishes a system of protection in the event of occupational risks which is independent of that in the LFT but which is consistent with it. The LSS provides in section 53 that an employer which has insured its workers shall be discharged from the obligations laid down in the LFT in respect of liability for occupational risks. Since it establishes more advantageous benefits for the worker and is independent of the system envisaged in the LFT, the funding of the benefits the LSS regulates comes essentially from the contributions of the occupational risk insurance, which are borne by the employer. The pensions for occupational risk are financed in part from the employers' contributions paid by this insurance and in part on a tripartite basis, i.e. by the employer, the workers and the State, from the resources deposited in the worker's personal account in the retirement savings system. In the Government's view, the provisions it cites are consistent with the provisions of the Convention. The Committee takes note of this information. It agrees with the Government that the LFT places an obligation on employers in favour of workers who are victims of occupational risk and that the LSS establishes a system of protection for this purpose. It notes the information supplied in the actuarial evaluation concerning occupational risk insurance, which points out that workers' savings account for a significant and growing part of the financing, whereas the LFT and the LSS place an obligation solely on the employer. The Committee wishes to stress that, in the actuarial evaluation supplied by the Government, it is indicated that the actuarial techniques recommended by the ILO are applied. The Committee nonetheless observes that, in the information sent by the Government, there are elements of actuarial calculations that have no basis in the current legislation. *The Committee reminds the Government that the Convention establishes a duty to ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically, and that such evaluations must be strictly in keeping with the existing legal provisions. The Committee accordingly reiterates its request for a comprehensive actuarial evaluation encompassing all the branches of insurance covered in the compulsory scheme, including, in particular, retirement, retirement at an advanced age and old-age insurance.*

4. In its previous comments, the Committee drew the Government's attention to *Article 29, paragraph 2(a)*, of the Convention, which provides that a reduced old-age benefit shall be secured at least to a person protected who has completed, prior to the contingency, a qualifying period of 15 years of contributions or employment. The Committee noted that, due to the recent switch to a fully funded system, persons who draw pensions under the retirement, retirement at an advanced age and old-age scheme, have not accumulated sufficient resources in their individual accounts to finance the respective pensions. However, workers who were first insured under the Social Security Act of 12 March 1973 need only 500 weeks of contributions, equivalent to ten years of contributions, to be entitled to this benefit. With regard to workers covered by the new Social Security Act who fulfil the conditions in *Article 29, paragraph 2*, of the Convention, the Committee observes that the Government merely states that protected persons who have completed, prior to the contingency, a qualifying period of 15 years of contributions or employment, while not having a guaranteed pension, do receive medical benefits from the IMSS and the balance of the funds in their personal accounts. *In these circumstances, the Committee can but express once again the hope that the Government will be able to re-examine the situation and indicate the measures adopted or envisaged to secure the provision of a reduced old-age benefit to all persons protected who have completed, prior to the contingency, a qualifying period of 15 years of contributions or employment, in accordance with the provisions of the Convention on this point.*

5. *Part XIII. Common provisions. (a) Article 71. Financing.* The Committee takes note of the information on the financing of benefits. *It requests the Government to indicate how effect is given to Article 71, paragraph 2, of the Convention, in respect of employment injury benefits, in so far as the capital accumulated in the individual accounts of workers goes towards the financing of such benefits, under the terms of sections 58 and 64 of the Social Security Act.*

The Government indicates that the capital withdrawn from the individual account for the financing of the pension is commensurate with the percentage of the degree of permanent incapacity. For example, where an insured person is evaluated at 30 per cent incapacity, no more than 30 per cent of the total capital in the account at the date of the commencement of the pension will be withdrawn, and such resources serve to finance the pension, with the difference to reach the basic capital required for the provision of the pension being provided by the IMSS through the amount insured. The Government adds that, in view of the relatively brief period since the reform of the pension system, the accumulation of capital in workers' individual accounts is still relatively insignificant in terms of contributing to the basic capital, with

the result that this type of benefit is covered by the amount insured, which comes from employers' contributions. **The Committee requests the Government to indicate the source of the resources under each system considered for each of the Parts of the Convention accepted, with an indication in particular of the rate or the level of the amounts deducted from earnings to finance each system, through either contributions or taxation. As employment injury benefits are covered by a specific insurance, please indicate the level of resources allocated for the financing of such benefits.**

(b) *Articles 71, paragraph 3, and 72, paragraph 1. Administration and oversight of the social security system.* In its previous comments, the Committee stressed the need for an overall actuarial evaluation of the entire social security system. Since the Government has not responded to its previous comments, the Committee can only stress that, in order to ensure application of *Article 71, paragraph 3*, in full, such an evaluation needs to cover the various pension schemes including and recapitulating at a specific evaluation date, the fixed and contingent liabilities, as well as all the debts and commitments of the State deriving from the old and the new social security systems, encompassing the responsibilities of the IMSS, INFONAVIT and the SAR, including collection, management, supervision and control. **The Committee reiterates that the viability and sustainability of the system depend on detailed analysis of the real and foreseeable development of the system as a whole. Indeed, this is the very essence of an actuarial study. Only an overall actuarial evaluation of the entire system will make it possible to estimate the contingent deficits to be underwritten by the State and to make the corresponding forecasts. It accordingly asks the Government to take the necessary measures to give effect to this provision of the Convention and to provide information on progress made in this matter.**

6. *Communications from representative organizations on the application of the Convention.* The Committee noted in its previous comments a communication of 8 March 2005 from the Independent Trade Union of Workers of the National Consumer Protection Office (SITPROFECO), and the Government's reply of 11 September 2006. It has likewise taken note of the legal action brought by AVON and the court's decisions. It notes that, on 30 October 2006, AVON and the IMSS reached a settlement out of court. It further notes the inspection visits carried out by the IMSS and the household visit that the IMSS undertook in the course of 2007. **The Committee asks the Government to indicate the impact of all the actions by the IMSS to remedy the situation of the AVON workers who were wrongfully disaffiliated from the compulsory social security scheme, providing information on: (a) the settlement reached by the IMSS and AVON; (b) the outcome of the house visit referred to; and (c) the content of the IMSS's final report of 3 July 2007.**

The Committee seeks further information in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2008.]

## Netherlands

### **Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1962)**

With reference to its observation of 2002, the Committee notes the information supplied by the Government in its report for the period 2001–06, as well as in the annual reports on the application of the European Code of Social Security. It also notes the comments made by the Trade Union Confederation of Middle and Senior Staff Unions in October 2006 on the Government's reports concerning Conventions Nos 102 and 121.

*Part III (Sickness benefit) in relation to Articles 71 and 72 of the Convention (Private insurance in sickness and disability schemes).* For a number of years, the Committee has been questioning the Government about the possible negative effects of the reforms making employers liable under certain conditions for the payment of sickness and disability benefits, which could result, in particular, from the abandonment of the participatory management of the social security schemes and from the risk of discrimination of workers with a history of medical problems. **The Committee would like the Government to continue to monitor these issues in consultation with the social partners and to inform the Committee of any additional measures taken to promote a strong role for workers' organizations and the participation of the representatives of the persons protected at the various levels of management in the delivery chain of benefits, as well as to prevent and remedy possible cases of discrimination.** In this respect the Committee notes that the Trade Union Confederation of Middle and Senior Staff Unions raises a number of important questions concerning: (1) guarantees of benefit payment in the event that an insurance company with which an employer bearing its own risk has taken out insurance cannot meet its financial obligations; (2) the role of the social partners after the passage of the Work and Income (Implementation Structure) Act (SUWI); and (3) the inspection activities to monitor compliance of employers with their obligation to continue to pay wages in the event of illness, pointing out that such wages may not be paid if workers are unaware that they are entitled to them. **The Committee would like the Government to reply in detail to these comments in its next report.**

*Part IV (Unemployment benefit) in conjunction with Article 69(f).* In its previous conclusions, the Committee observed that, under *Article 69(f)* of the Convention, sanctions in respect of claimants of unemployment benefit who are deemed to be "culpably unemployed" under Dutch law may apply only in cases where unemployment has been caused by the wilful misconduct of the person concerned, whereas passive behaviour by which this person omits or neglects to protest against dismissal may not necessarily be wilful. In reply, the Government indicates that, from 1 October 2006, unemployment benefit will no longer be refused due to the fact that the employee accepts or does not oppose his or her

dismissal. The Committee welcomes this change in the regime of sanctions applied to claimants of unemployment benefit, which will permit better application of the corresponding provisions of the Convention.

The Committee raises a number of further questions in a request addressed directly to the Government.

## New Zealand

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1938)

The Committee notes the information supplied by the Government in response to its previous comments as well as to the comments made in 2006 by the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand regarding the manner in which the Convention is applied in the country. *It also notes the adoption in 2001 of the Injury Prevention, Rehabilitation, and Compensation Act (IPRC Act) and would appreciate if the Government would communicate with its next report detailed information on the manner in which the newly adopted legislation as well as its implementing regulations give effect to each of the provisions of the Convention.*

*Article 9 of the Convention. Co-payment of cost of medical treatment by injured workers.* In its previous comments, the Committee recalled that, under this provision of the Convention, the cost of medical aid and such surgical and pharmaceutical aids as are recognized to be necessary for an injured worker shall be defrayed by the employer, or by accident insurance institutions or by sickness or invalidity insurance institutions. Consequently, injured workers shall not be held accountable to pay the difference between the actual cost of medical treatment and the amounts which the insurers must pay for the medical treatment of the victims of employment injuries.

In its comments on the application of the Convention, the NZCTU recognizes and supports the Government's commitment to working towards compliance with the Convention but also expresses concern over the fact that, although the decision to rectify the situation was taken more than 12 years ago, injured workers continue to contribute to the cost of treatment in the form of a co-payment charged at the time of initial treatment.

For its part, Business New Zealand considers that the Convention has been superseded since the introduction in 1970 of a more comprehensive national system. It therefore suggests that the country's system should be exempted from the application of the Convention, as constituting a special scheme, the terms of which are not less favourable than those of the Convention, in conformity with its *Article 3, paragraph 2*.

In reply to these comments, the Government reiterates its commitment to continue to move towards compliance with the Convention. It indicates that, since 2001, the Accident Compensation Corporation (ACC) has increased its use of contracts with providers for the delivery of treatment services and that there have been several increases to ACC's contributions. The Government also states that measures taken in order to ensure compliance with the Convention need to be balanced with the requirement to prevent scheme cost escalation and indicates that it is studying practical options to this end. The Government is hopeful that the approach being taken will satisfy both the provisions of the Convention and the interests of employers and workers.

The Committee takes note of this information. *In view of the reaffirmed commitment to give full effect to this Article of the Convention, the Committee trusts that the Government will be able to indicate in its next report the measures effectively taken to abolish any financial participation by the victims of occupational accidents in the cost of care provided to them. It also requests the Government to indicate in its next report the extent to which the adoption of the IPRC Act has represented a step towards ensuring better compliance with this provision of the Convention.*

Moreover, the Committee also wishes to point out with respect to *Article 3, paragraph 2*, of the Convention, that this provision can only be used to exempt specific categories of persons when such persons are covered by a special scheme, the terms of which are not less favourable than those of the Convention. It may, consequently, not be invoked in order to deprive all categories of workers covered by the Convention from the protection that it guarantees.

## Niger

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1966)

The Committee notes the information provided by the Government in October 2006 in reply to its previous comments. The Government indicates in its report that, since 1 January 2006, the amount of the guaranteed minimum interoccupational wage (SMIG), which had not changed since 1980, has been increased by around 50 per cent, which has resulted de facto in an increase in the level of pensions. While noting this information with interest, the Committee recalls that no adjustment of pensions had taken place for over 25 years to take into account inflation and follow fluctuations in the general level of earnings in the country. *So as to be in a better position to assess the effect of the increase in the SMIG on the level of social security benefits, the Committee would be grateful if the Government would indicate in its next report the benefits covered by this increase, their new minimum amounts and the resulting replacement rate in relation to the reference wage of an ordinary adult male labourer determined in accordance with the methodology envisaged in Article 66 of the Convention. With regard to the extent to which the total value of family benefit attains*

*the level prescribed by Article 44 of the Convention, the Committee requests the Government to redo the calculation based on the reference wage referred to above or the amount of the SMIG if it corresponds to the wage actually received by an ordinary labourer.*

The Government also indicates in its report that the conclusions of the actuarial study of the National Social Security Fund carried out with the technical assistance of the International Labour Office (actuarial evaluation of the National Social Security Fund as at 31 December 2002, ILO/RP/Niger/R.13, Geneva, ILO, February 2005) have been amended and strengthened in a tripartite context and have given rise to proposals for the reform of certain rules governing the operation of the Fund and the legal framework for certain benefits, including pensions. *In this context, the Committee requests the Government to indicate the measures envisaged for the introduction of an automatic indexation mechanism for pensions as proposed in the above study and once again requests it to provide full statistical data on the adjustment of current periodical payments as required by the report form on the Convention under Title VI of Article 65. Furthermore, it draws the Government's attention to the obligation to provide a reduced old-age pension, in accordance with Article 29, paragraph 2, of the Convention, instead of the old-age allowance in the form of a lump sum which is currently payable, to a person who has completed a qualifying period of 15 years of contribution or employment, without however fulfilling the requirement of 20 years of insurance coverage prescribed in section 13(1)(a) of Decree No. 67-025 of 1967.* In this respect, the actuarial study shows that greater flexibility in the criteria for entitlement to periodical payments for retirement so that they are payable after only 15 years of affiliation to the scheme would only result in a slight increase in the cost of the old-age branch in the long term. *With regard to the need to reduce from six to three months the qualifying period for entitlement to family allowances, in accordance with Article 43 of the Convention, the Committee notes the readiness of the Government to envisage this adaptation as soon as the economic situation of Niger and of its social security institution so permits. The Committee hopes that the Government will ensure that these issues are fully taken into account in the current process of social security reform and that it will indicate the progress achieved in its next report.*

## Norway

### **Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) (ratification: 1990)**

*Article 21 of the Convention (suspension of benefit).* With reference to its previous comments which it has been making for a number of years, the Committee recalls that, according to section G.4 of the guidelines of the Directorate of Labour, in order to be regarded as a genuine jobseeker, an applicant for unemployment benefit must be willing and able to accept *any* work that is remunerated according to a collective wage agreement or a local custom. Section G.4.1 details that the obligation to take *any* work means that applicants for employment cannot make reservations as regards the type of occupation they will work in and must be willing to accept any work they are physically and mentally fit for, *even in occupations for which they are not trained or in which they have no previous experience.* The applicant's acquired experience and length of service in former occupations – criteria which are expressly mentioned for assessing the suitability of employment in *Article 21(2)* of the Convention – are not taken into account when the decision on the withdrawal of the benefit is taken following the jobseeker's refusal to accept the employment offered on these grounds. Such guidance of the employment offices leads astray of the aim of the Convention which consists precisely in offering unemployed persons protection during the first 26 weeks of unemployment from the obligation to take up jobs that are not suitable to their acquired professional and social status. *The Committee regrets to note that the Government's report merely repeats the "reasons why there is no initial period in which the beneficiary may refuse jobs offered". The Committee therefore once again urges the Government to bring the guidelines of the Directorate of Labour into conformity with Norway's obligations under the Convention and the European Code of Social Security, which forbid applying sanctions for refusing to accept unsuitable job offers at least during the initial period of unemployment.*

*Article 26 (special provisions for new applicants for employment).* In the direct request of 2006, the Government was asked to specify, in accordance with *paragraph 2 of Article 26* of the Convention, which three of the ten listed categories of persons it undertakes to protect, what concrete social benefits and services are placed at their disposal, and what additional categories of the new applicants for employment would benefit from such protection in line with *paragraph 3* of this Article. In reply, the Government has provided information on the social benefits to persons who are temporarily or permanently outside the workforce due to sickness, disability, rehabilitation, unemployment or social assistance. The Committee wishes to point out that these categories of persons do not correspond to those expressly mentioned under items (a) to (j) of *Article 26(1)*. *It would therefore ask the Government to indicate measures taken or contemplated to give full effect to the provisions of Article 26 of the Convention in law and in practice.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Panama

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1958)

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 Government is asked to reply in detail to the present comments in 2008.]

## Philippines

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1960)

*Article 5 of the Convention. Limitation in time of periodical payments in case of permanent partial incapacity.* For a number of years, the Committee has been drawing the Government's attention to the fact that, contrary to this provision of the Convention, section 193 of the Labour Code provides that the benefits in the event of permanent partial disability are paid only for a limited period, proportional to the gravity of the injury but up to a maximum of 50 months. In its last report, the Government indicates that the current system for the compensation of permanent partial incapacity is considered to be in the best interest of the beneficiaries and adds that it is engaged in a continuing review of the laws, policies and rules in order to make them more meaningful and responsive to the needs of the workers and make them in consonance with the provisions of the ILO Conventions.

While it takes due note of this information, the Committee is once again bound to recall that the Convention establishes the principle whereby in case of permanent incapacity or death of the victim, compensation shall be paid in the form of periodical payments. It does not provide for the possibility to limit the time during which permanent partial incapacity benefits are paid to injured workers. It is indeed only in this form that the compensation paid to the victim for the loss of capacity achieves its objective, particularly in cases involving a high percentage of incapacity. ***The Committee therefore hopes that the Government will be able to reconsider this matter so as to ensure that the periodical payments made in compensation for permanent partial incapacity are no longer limited in time, particularly in cases involving a high rate of permanent incapacity.***

## Portugal

### **Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1994)**

With reference to its previous comments, the Committee notes the Government's report, accompanied by observations from the Confederation of Trade and Services of Portugal (CCSP), the Portuguese Confederation of Tourism (CTP), the General Confederation of Portuguese Workers (CGTP-IN) and the General Union of Workers (UGT).

*Sustainable development of social security.* The Committee recalls that following the entry into force of Framework Act No. 32/2002 of 23 December, establishing a new structure for the social security system, extensive reforms have been carried out in the various branches and have been covered by a broad public discussion (as was the case in 2006 on the occasion of the revision of the legal framework for unemployment protection). The signature in October 2006 of the Agreement on Social Security Reform between the Government and the social partners with a view to ensuring the financial equilibrium of the social security system in the face of current economic, social and demographic challenges constituted a new stage in this process. In accordance with the Public Administration Restructuring Programme (PRACE), Legislative Decree No. 211/2006 of 27 October approved the organigramme of the Ministry of Labour and Social Solidarity. In 2007, a new Framework Act on the social security system, Act No. 4/2007 of 16 January, once again reformed the structure of social security, among other measures by introducing optional public and private supplementary capitalization schemes. Finally, Legislative Decree No. 52/2007 of 8 March reactivated the National Social Security Council, which is an advisory body through which the social partners and other social organizations participate in the management of social security policy. The Committee is bound to note that Portugal is in the process of establishing a new social security system redesigned for the twenty-first century. Although there is no unique model to be followed in this respect, in order to ensure their sustainable development all systems should nevertheless comply with certain basic principles of sound governance and social cohesion, compliance with which is under the general responsibility of the State. Moreover, this responsibility takes on particular importance during such periods of restructuring, not only in the national context to ensure the survival of the system, but also at the international and regional levels with a view to maintaining the regulatory framework established by the common provisions of international and European law. ***In view of the profound and evolutionary nature of the social security reforms in Portugal, the Committee considers it necessary to follow closely developments in the situation from the point of view of the application of the relevant ILO Conventions. In order to do so, it would be grateful if the Government would continue providing detailed information on any new legislative, administrative or judicial measures adopted giving effect to the Agreement on Social Security Reform of 2006.***

*Part II (Medical care) of the Convention, Article 10.* The Committee notes the detailed information provided by the Government concerning the current reform of the health system in Portugal and the main initiatives to improve the quality and effectiveness of care and to contain costs. It notes in particular that, for the first time for several decades, the financial situation of the national health system in 2006 was in surplus by 167 million euros. The containment of the cost of primary care and in public hospitals with an enterprise status (EPE) was accompanied by an increase in productivity and a reduction in the average waiting time for surgery, which fell from 8.6 months at the end of 2005 to six months during the first quarter of 2007. ***The Committee notes these developments with interest. It requests the Government to indicate the other criteria that are used in Portugal to monitor and measure the improvement in the general health condition of the population and the effectiveness of the action of the national health system in this respect. It would also be grateful to be provided with information on the new rules relating to the cost-sharing of beneficiaries in health care, including the new scale of cost-sharing approved by Order No. 395-A of 30 March 2007.***

*Part IV (Unemployment benefit).* The report indicates that the legal framework for unemployment protection was modified by Legislative Decree No. 220/2006 of 3 November, including in relation to the following aspects: clarification of the concept of suitable employment; reduction of the qualifying period for access to unemployment insurance; modification of the period during which unemployment benefit is provided, which is based on the age of the beneficiary and the length of the contribution period; and changes to the rules relating to early retirement. ***The Committee hopes that the Government's next report will contain a detailed evaluation of the impact of these changes on the application of each of the Articles of Part IV of the Convention, with particular reference to the provisions relating to suitable employment and the qualifying period.***

*Part V (Old-age benefit).* Legislative Decree No. 187/2007 of 10 May, which entered into force on 1 June, established a new legal framework for old-age and invalidity benefits under the general social security scheme. Among the innovative measures, the Committee notes in particular:

- the acceleration of the transitional period towards the calculation formula introduced by Legislative Decree No. 35 of 19 February 2002;
- the introduction of a financial viability factor in the calculation of pension benefits as from 2008, which is the outcome of the relationship between average life expectancy in 2006 and the figure for the year prior to the date on which the pension is claimed; and
- the changes in the rules of the scheme relating to the flexibility of the retirement age, which takes the form of a penalization of 0.5 per cent for each month prior to the age of 65 years.

***In view of the new rules for the calculation of old-age pensions introduced as of January 2008, the Committee requests the Government to recalculate in its next report the replacement rate of the old-age benefit for a standard beneficiary who has completed a qualifying period of 30 years.***

*Part VI (Employment injury benefit).* In its observations, the CGTP-IN alleges that as a result of the dualistic insurance system, private for employment accidents and public for occupational diseases, the victims of employment accidents often receive less favourable treatment than those affected by occupational diseases. Moreover, the legal provisions relating to vocational rehabilitation are still not properly regulated and are not therefore applied. ***In view of these allegations, the Committee requests the Government to demonstrate in its next report that the medical care provided to victims of employment accidents covered by private insurance companies includes all the types of care referred to in Article 34, paragraph 2, of the Convention without any limitation whatsoever and that it is provided not only with a view to restoring the health of the person concerned and her/his ability to attend to her/his personal needs, but also to maintain and improve the health and ability to work, in accordance with Article 34, paragraph 4. Please also indicate the extent to which the contracts concluded by employers with private insurance companies envisage the vocational rehabilitation of victims of employment accidents, in accordance with Article 35 of the Convention.***

*Part XI (Standards to be complied with by periodical payments), Article 65, paragraph 10.* (a) In reply to the Committee's previous comment, the Government shows in its report that the adjustment rate of pensions indexed to the minimum monthly guaranteed earnings (RMMG), namely minimum old-age and invalidity pensions under the general scheme, pensions under non-contributory and assimilated schemes and under the special social security scheme for agricultural activities, benefited during the period 2003–06 from increases that were higher than the inflation rate, in accordance with *Article 65, paragraph 10*, of the Convention. The report also indicates that, in accordance with the new Framework Act on the social security system, Act No. 53-B/2006 of 21 December established the Social Support Index (IAS) and determined new rules for the adjustment of pensions and other social benefits under the social security system. As from 1 January 2007, the IAS replaced the earlier RMMG as the reference index for benefits. The value of the IAS is updated annually on the basis of the real growth of the gross domestic product (GDP), corresponding to the average of the average annual growth rates for the past two years, and based on the average variation over the past 12 months of the Consumer Price Index (CPI), without housing, which is available on 30 November of the year prior to the year to which the adjustment is related. The Government indicates that with a view to reconciling changes in the purchasing power of pensions and the financial sustainability of the system, the new mechanism provides for a differentiation in adjustment rates, by giving priority to pensions at a level that is equivalent to or lower than 1.5 IAS, which cover around 90 per cent of the beneficiaries of old-age pensions; an increase in the purchasing power of this segment of beneficiaries is guaranteed. ***The Committee would be grateful if the Government would explain the advantages for beneficiaries of the transition from the former system of indexation related to the RMMG introduced in 2002 to the new system of the adjustment of pensions related to the GDP and the CPI and if it would demonstrate, based on statistical data for the period covered by its next annual report, that the adjustment rate of pensions for all persons protected follows variations in the general level of earnings and the cost of living, in accordance with Article 65, paragraph 10, of the Convention.***

(b) In its previous comments, the Committee requested explanations on the manner in which pensions provided in respect of employment injury by private insurance companies have been revalued and adjusted. The report indicates in this respect that the legal framework governing employment accident funds (FAT) was modified by Legislative Decree No. 185/2007 of 10 May, so as to guarantee insurance companies the reimbursement of the amounts required for the adjustment of pensions for death or for permanent incapacity of 30 per cent or higher, as well as the adjustment of the supplementary benefit for the assistance of another person. This Legislative Decree establishes a specific system for the annual adjustment of employment injury pensions based on the adjustment references (the CPI and the growth of the GDP) envisaged by the new system for the adjustment of social security pensions, with the exclusion of step adjustments over contribution careers. ***The Committee hopes that the new system for the adjustment of employment injury pensions will continue to maintain the real value of the benefits in relation to the cost of living.***

## 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 from the information provided by the Government that the purpose of Act No. 06/2003 of 22 March 2003 was to amend and supplement certain provisions of the Legislative Decree of 22 August 1974 organizing social security. Following this amendment, section 2 of the above Legislative Decree provides, as it did previously, for the need to determine by ministerial order the arrangements under which apprentices and casual and temporary workers may benefit from the social security scheme in relation, among other matters, to compensation for employment injury. This provision also now indicates that the above order shall be made following the proposals put forward in this respect by the Executive Board of the Social Fund (CACS). In this respect, the Government indicates that it has taken due note of the comments that the Committee has been making for several years requesting it to take the necessary measures to extend protection against employment injury to apprentices and casual and temporary workers, in accordance with *Article 2* of the Convention. It adds that it will make efforts to adopt the text concerned. **The Committee notes this information and would be grateful if the Government would indicate in its next report whether, since 2003, the CACS has undertaken studies or made firm proposals as a basis for the extension of the social security scheme to apprentices and casual workers, or whether such studies or proposals are planned. It expresses the firm hope that in its next report the Government will be in a position to indicate the tangible progress achieved in the extension of the national legislation respecting employment injury to the above categories of workers.**

[The Government is asked to reply in detail to the present comments in 2008.]

## Saint Lucia

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1980)

With reference to its previous comments, the Committee notes the Government's indication that there has been no change to the legislation during the period covered by the report. It is therefore bound to reiterate its previous observation, which read as follows:

The Committee notes the adoption of the National Insurance Corporation Act No. 18 of 2000, which repeals the National Insurance Act of 1978. It notes that the regulations applying the latter Act remain in force (National Insurance Regulation No. 37 of 1984). However, the Government indicates in this respect in its report that the Corporation is in the process of drafting new regulations. **The Committee hopes that the Government will not fail to take advantage of this occasion to adopt the necessary measures to bring the national legislation into conformity with the following provisions of the Convention.**

*Article 7 of the Convention. Provision of additional compensation to injured workers requiring the constant help of another person.* **The Committee notes that, contrary to this provision of the Convention, neither the national Insurance Corporation Act of 2000 nor the 1984 Regulation referred to above contain provisions guaranteeing additional compensation for injured workers whose incapacities are of such a nature that they must have the constant help of another person.**

*Articles 9 and 10. Medical, surgical and pharmaceutical aid. Application of a ceiling to the expenses covered.* In reply to the Committee's previous comments, the Government confirms that medical benefits, which include medical, surgical and pharmaceutical aid, as well as the provision of artificial limbs, remain subject to a maximum amount. It adds that the legislation does not provide for additional funding to renew or purchase artificial limbs. **The Committee hopes that the Government will be able to re-examine this matter and requests it to indicate the measures adopted with a view to the provision to injured workers, in accordance with Articles 9 and 10 of the Convention, of medical, surgical and pharmaceutical aid, including the supply and renewal of artificial limbs and surgical appliances as are recognized to be necessary, without the application of any ceiling to the amount of this aid.**

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

## Sao Tome and Principe

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1982)

With reference to its previous comments, the Committee takes note of the information provided by the Government in its report referring to the adoption of Framework Act No. 7 of 2004 on social protection. It notes with satisfaction that, in conformity with *Article 2, paragraph 1, of the Convention*, the above Act no longer prescribes a maximum age for purposes of affiliation to social security, including with respect to occupational risks. The Committee also notes with satisfaction that the affiliation of foreign workers to social security is not made conditional upon the existence of bilateral conventions on social security with their countries of origin.

**The Committee notes the Government's statement that the implementing regulations of the above Act are to be adopted soon and would be grateful to be kept informed of any developments in this respect and to receive copies of**

*these regulations once adopted. It trusts that, on this occasion, the Government will duly take into account the provisions of the Convention as well as the questions it had raised previously with respect to the application of Articles 5 (benefits for permanent partial incapacity), 7 (supplementary benefit where the victim needs the constant help of another person), and 9 and 10 (surgical care and supply and normal renewal of such artificial limbs and surgical appliances as are recognized to be necessary) of the Convention.*

## Senegal

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (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:

With reference to its 2002 observation relating to statistical data on the adjustment of employment injury benefit, the Committee notes that the Government confines itself in its report to stating that there has been no change in the legislation on the various benefits provided in the event of employment injury. It draws the Government's attention to the fact that in 2006 it was due to submit a detailed report containing statistical data on the coverage and level of benefits, and on the adjustment of long-term benefits, as requested in the report form under *Articles 4, 19 or 20, and 21 of the Convention*. *The Committee therefore hopes that the Government will not fail to provide such statistical data for the reference period covered by the report (2001–05) for examination at its next session in November–December 2008.*

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

## Sierra Leone

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1961)**

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

*Article 5 of the Convention.* In its 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.*

## Spain

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1929)**

The Committee notes the entry into force of Royal Decree No. 1041/2005 of 5 September, amending certain provisions of Royal Decree No. 84/1996 of 26 January, approving the general regulations respecting the registration of enterprises and the registration, coverage, cessation of coverage and amendment of workers' data for the purposes of social security. As a consequence of this amendment, section 42 of the latter text extends the protection afforded by the Spanish social security system for employment accidents and occupational diseases to employed persons who are nationals of a State that has ratified ILO Convention No. 19, including when the latter are not legally resident in Spain and do not have a work permit. *The Committee notes the adoption of this measure with interest and would be grateful if the Government would provide information in future reports on the manner in which effect is given to this provision in practice.*

### **Unemployment Provision Convention, 1934 (No. 44) (ratification: 1971)**

The Committee takes notes of the detailed information sent by the Government in its report and wishes to draw the Government's attention to the following points.

*Article 2, paragraph 2, of the Convention. Exclusion of certain workers from the scope of the unemployment insurance scheme.* With reference to the Committee's previous comments on the exclusion from the unemployment insurance scheme of workers employed under training contracts, the Government confirms that section 11.2(a) of the Workers' Act establishes 21 years as the maximum age for the conclusion of such contracts. The Government also indicates that the social dialogue process for a reform of the labour market led in May 2006 to an agreement which has

implications for the manner in which training contracts are regulated. The agreement provides, for example, that the maximum age is to be increased to 24 years in the case of apprentices trained under school–workshop programmes and in vocational training courses (*alumnos-trabajadores a los programas de escuelas-taller y casas de oficios*) and that it will be abolished for apprentices engaged under employment workshop programmes (*alumnos-trabajadores a los programas de talleres de empleo*) and for persons with disabilities. The Committee takes due note of this information. It points out that although the Convention allows the exclusion from unemployment benefit of young workers under a prescribed age (*Article 2, paragraph 2(f)*), the age must not be too high. The Convention also allows the exclusion of exceptional classes of workers in whose cases there are special features which make it unnecessary or impracticable to apply to them the unemployment protection scheme (*Article 2, paragraph 2(j)*). However, States that resort to the exceptions allowed by the abovementioned provisions are required in their subsequent report to provide information on the reasons for excluding the workers in question and to indicate whether these circumstances still exist and continue to warrant, for example, the existence of different age limits on the basis of type of return to work assistance programme. The agreement concluded in the course of the social dialogue process to reform the labour market, the effect of which is to increase or abolish the upper age limit for concluding training contracts for certain categories of workers, could tend to establish the existence of circumstances warranting such measures. **The Committee nonetheless notes that the Government's report contains no relevant extracts of the final report on the work done in the context of the social dialogue process that led to the agreement of May 2006 with the social partners, or the statistical information requested previously, broken down by age, on the number of young persons engaged on the basis of training contracts and the average duration of these contracts. It will be grateful if the Government would provide all the requisite information in its next report.**

*Part V of the report form.* The Committee previously expressed its concern at the large number of unemployed with no protection and asks the Government to continue to provide detailed information on the number of beneficiaries of unemployment benefit in relation to the total number of the registered unemployed, and on any new measures taken in this respect. **In the absence of any information in the Government's last report, the Committee can only hope that such information will be sent shortly. The Committee further notes that according to the Government's report, the number of judicial decisions on disputes concerning the payment of unemployment benefit dropped significantly between 2002 and 2005, and would be grateful if the Government would provide information on the possible reasons for this.**

## Syrian Arab Republic

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1963)

The Committee notes that the Government's report replies to the Committee's previous observation, but does not include information requested under each Article of the Convention in the report form for a detailed report for the period 2001–06, which the Government was asked to supply in 2006. The Committee therefore hopes that the Government would not fail to provide a detailed report for examination at its next session in November–December 2008 together with the information on the points mentioned below.

*Article 5 of the Convention.* The Committee recalls that to enable the beneficiaries who leave the territory of the Syrian Arab Republic to transfer pensions due to them to their new country of residence, section XXIV of Act No. 78, amending section 94 of the Social Insurance Code, authorizes the beneficiary to request such transfer, subject to bearing fees and costs arising out of the transfer, or to request replacement of the pension by a lump sum payment. **In order to assess how this legislation is being applied in practice, the Committee would ask the Government to provide detailed statistical data on the number of such requests submitted to the General Agency for Social Insurance both for the transfer of pension and its replacement by a lump sum, the amount of fees and costs charged for the transfer of the pension, and the amount of the pensions and lump sums actually transferred abroad. Please provide concrete examples of calculation of the transferred amounts of pensions and lump sums to beneficiaries of foreign and Syrian nationality residing abroad and explain the method of the transfer.**

*Article 10, paragraph 1.* In reply to the Committee's previous observation on the need to *explicitly* include refugees and stateless persons within the field of application of the Social Insurance Code, the Government indicates that, in 2006, a committee was set up to bring amendments to the Social Insurance Code and that this observation will be taken into account through the amendment of the Code so as to explicitly include refugees and stateless persons. **Please indicate progress made in this respect in the next report.**

[The Government is asked to report in detail in 2008.]

## United Republic of Tanzania

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1962)

Ever since the entry into force of the Convention for the United Republic of Tanzania, the Committee has been drawing the Government's attention to the need to amend the Workmen's Compensation Ordinance (WCO) (Chapter

263). The latter provides for payment in the form of a lump sum in the event of death or permanent incapacity resulting from an industrial accident, whereas *Article 5 of the Convention* only authorizes the conversion of the periodical payments into a lump sum in cases where the competent authority is satisfied that it will be properly utilized. In its last report, the Government once again indicates that the labour law reform is still not completed and states that it will eventually have the effect of replacing the WCO with a new act guaranteeing that in case of industrial accidents resulting in permanent incapacity or death, the victims or their dependants will receive compensation in the form of periodical payments. The Government further indicates that all employers are required to take out industrial accident insurance for their employees but states that there are currently no statistics available as regards the total number of employees and apprentices employed in the country, the amount of the benefits paid and the number of accidents reported.

*While taking due note of this information, the Committee observes that, according to sources such as the Social Security Programmes throughout the World 2007 and the National Social Security Fund, the employment injury compensation scheme operating in the country appears to have recently been reformed. It consequently requests the Government to supply with its next report detailed information on the manner in which the changes in the national legislation affect the application of each of the provisions of the Convention. It also hopes that the Government will supply in its next report relevant statistical data on how industrial accident compensation functions in practice.*

## Tunisia

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1965)

The Committee notes the information provided by the Government in September 2006 in reply to its comments of 2002 relating to Conventions Nos 19 and 118. However, it notes that the Government has not provided a detailed report on Convention No. 118 covering the period of the five last years in accordance with the report form adopted by the Governing Body. *The Committee therefore hopes that the Government will not fail to provide a detailed report for examination at its session in November–December 2009 together with replies to the following observations.*

*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, paragraph 1, of the Convention, and may be refused, contrary to Article 5, paragraph 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, paragraph 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, paragraph 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 Convention No. 118 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 Convention 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, paragraph 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 Government is asked to report in detail in 2009.]

## Turkey

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1946)**

The Committee notes the information and statistics provided by the Government, and the observations made by the Confederation of Turkish Employers' Associations (TISK) and the Confederation of Public Servants' Trade Unions (MEMUR-SEN) on the application of the Convention.

*Developments in national law and practice.* The Committee notes that several amendments have been made to the national legislation during the period covered by the last report. Accordingly, TISK reports the adoption of Act No. 5510 on social insurance and general health insurance of 31 May 2006, which has been in force since 1 January 2007, and which appears to establish the new legal framework applicable to occupational diseases. Furthermore, according to the Government's report, Act No. 5489 of 19 April 2006 has had the effect of modifying the composition of the Higher

Medical Social Insurance Council, which intervenes in determining the occupational origin of pathologies. Finally, MEMUR-SEN indicates that certain diseases have been recognized as being of occupational origin by the Higher Medical Social Insurance Council, although this recognition has not been extended to employees of the public service, who are governed by other legislative texts (Act No. 5434 on pension funds).

The Government adds that the development of the system relating to the pathological manifestations of occupational diseases has been given priority in national objectives relating to occupational safety and health for the period 2006–08 and indicates that a study is being undertaken on this subject.

***The Committee would be grateful if the Government would indicate in its next report the manner in which the above amendments to the national legislation affect the application of the Convention. Please provide information on the outcome and action taken as a result of the above study, together with copies, where possible translated, of the new texts governing occupational diseases and, where appropriate, an updated list of such diseases. The Government is also requested to reply to the comments made by MEMUR-SEN calling for the establishment of a tripartite commission covering the issue of the extension to employees in the public service of the newly recognized occupational diseases.***

*Application of the Convention in practice.* In its previous comments, the Committee requested the Government to provide detailed information with regard to the concerns expressed by the Confederation of Turkish Trade Unions concerning the inadequacy of the system for the recognition of occupational diseases, and, in particular, the low number of occupational diseases, recorded (1,055 cases in 1997). According to this organization, this figure demonstrates that the system for the determination of occupational diseases is not adequate: insufficient numbers of medical personnel, the failure to undertake the necessary examinations and the lack of awareness and insufficient training of medical personnel in this field.

The Committee notes that, with the exception of the information concerning the programme for the development of the system relating to the pathological manifestations of occupational diseases, the Government's report does not contain any other information relating to the concerns expressed by the abovementioned organization with regard to the operation of the system for the recognition of occupational diseases. It notes in this respect that the figures provided by the Government in its report show that the number of occupational diseases recognized each year in the country is clearly declining in relation to previous figures. Indeed, the number of occupational diseases recognized annually fell constantly between 2001 and 2005, from 883 to 384, respectively. The data provided also show a very marked imbalance between men and women since, for 2004, there were 380 cases of recognized occupational diseases affecting men workers, compared with four for women. ***In view of the above, the Committee would be grateful if the Government would provide detailed information on the operation of the national system for the recognition of occupational diseases indicating, among other information, the trades, industries or processes giving rise to occupational diseases or poisoning, and specifying the importance of these trades, industries or processes, the number of workers employed therein and the number of cases of diseases or poisonings that have been reported.***

*Restrictive nature of the schedule of occupational diseases.* In its previous comments, the Committee requested the Government to amend the national legislation so as to clearly indicate that the schedule of pathological manifestations is of an indicative nature. It observes that, despite the amendments made to the legislation during the period covered by the report, this specification has not yet been made, although the Government reiterates, on the one hand, that any disease that is not referred to in the schedule of occupational diseases, may nevertheless be recognized as an occupational disease by the Higher Medical Social Insurance Council and, on the other hand, that the schedule of pathological manifestations is not restrictive, but of an indicative nature. ***The Committee notes this information and hopes that on the occasion of a future revision of the relevant national legislation, and in order to prevent any ambiguity, the Government will take the necessary measures to explicitly indicate that the schedule of occupational diseases is of an indicative nature.***

### ***Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1974)***

With reference to its previous observation, the Committee notes the information provided in the Government's report for the period from 1 June 2004 to 31 May 2006, as well as the comments made by the Confederation of Turkish Trade Unions (TÜRK-IS) and the Turkish Confederation of Employers' Associations (TISK) communicated by the Government together with its report.

The Government states in its report that with the entry into force of Act No. 5510 of 31 May 2006 on social insurance and general health insurance, as of 1 January 2007, the Social Insurance Act No. 506 of 1964 and the Social Security Organization for Artisans and the Self-employed (BAG-KUR) Act No. 1479 of 1971, will be abrogated. The new single Act puts an end to the different treatment of foreign nationals under previous Acts, applies equally to Turkish citizens and foreign nationals and expressly covers refugees and stateless persons working under an employer's authority or being self-employed, who could therefore benefit from all social insurance branches on an equal footing with Turkish citizens, in accordance with *Article 10, paragraph 1, of the Convention*. The report refers in particular to sections 60(1)(c) and 61(b) of the new Act providing coverage of refugees and stateless persons in respect of general health insurance. ***The Committee notes this information with satisfaction. It would like the Government to provide a translation of the corresponding sections of Act No. 5510.***

From the communication of the Turkish Confederation of Employers' Associations, the Committee notes in particular that, with the entry into force on 1 June 2000, of the Unemployment Insurance Act No. 4447, the Turkish legislation is now considered to be in line with the Convention also in respect of the unemployment benefit branch, which was not accepted by Turkey at the moment of the ratification of the Convention. The Committee wishes to draw the Government's attention to Article 2, paragraph 4, of the Convention, according to which each Member may subsequently notify the Director-General of the ILO that it accepts the obligations of the Convention in respect of one or more branches of social security not already specified in its ratification.

## United Kingdom

### Anguilla

#### ***Workmen's Compensation (Accidents) Convention, 1925 (No. 17)***

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 earlier comments, the Committee had drawn attention to Ordinance No. 21 of 1955 on compensation for occupational injuries, which does not give full effect to certain provisions of the Convention. Thus, on the one hand, section 2(1)(a) of the Ordinance excludes from its scope manual workers whose earnings exceed a certain limit, contrary to *Article 2(2)(d) of the Convention* which only authorizes this type of exclusion for non-manual workers and, on the other hand, section 8(a), (b) and (c) of the same Ordinance provides that, in the event of death or permanent incapacity, compensation shall be paid to the victim in the form of a lump sum, while *Article 5* of the Convention guarantees compensation for the victim or his dependants in the form of periodical payments. Such compensation may however be wholly or partially paid in a lump sum if the competent authority is satisfied that it will be properly utilized.

In its report, the Government indicates that the draft legislation placing compensation for occupational injuries under the social security scheme has still not been implemented. However, sickness and survivors' benefits are granted to victims of occupational accidents or their dependants under social security legislation without taking the occupational origin of the incident into account.

While noting this information, the Committee recalls that in its 1991 observation it drew the Government's attention to the fact that the right to sickness, disablement and survivors' benefits granted under the social security legislation (Social Security (Benefits) Regulations, 1981) is conditional upon a minimum qualifying period, which is contrary to the Convention. *Given these circumstances, the Committee hopes the Government will take all the measures necessary to ensure full application of Articles 2 and 5 of the Convention, either by establishing an employment industry benefit scheme under the social security scheme in conformity with the Convention, or by amending section 2(1)(a) and section 8(a), (b) and (c) of Ordinance No. 21 of 1955 on compensation for occupational accidents in the light of the above comments. The Committee trusts that the Government's next report will indicate progress achieved in this connection.*

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

### Gibraltar

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

With reference to its previous comments, the Committee notes with satisfaction that, following the amendments in 2004 of the Occupational Diseases Regulations (1952), the list of recognized occupational diseases has been complemented in order to be brought into conformity with the list established by the Convention. Henceforth, in accordance with the relevant provisions of the Convention, the new list recognizes the occupational nature of diseases or poisonings caused by halogen derivatives of hydrocarbons of the aliphatic series in relation to occupations involving the use or handling of, or exposure to the fumes, dust or vapour containing halogen derivatives of hydrocarbons of the aliphatic series. Furthermore, pathological manifestations due to X-rays, radium or other radioactive substances are also considered as occupational diseases when the nature of the occupation includes exposure to X-rays, ionizing particles, radium or other radioactive substance or other forms of radiant energy. Finally, the modified list also recognizes the occupational nature of anthrax infections in cases where the occupation involves handling, loading and unloading or transport of merchandise or of animal carcasses or parts of such carcasses including hides, hoofs and horns, or work in connection with animals infected with anthrax.

### Isle of Man

#### ***Workmen's Compensation (Accidents) Convention, 1925 (No. 17)***

*Articles 9 and 10 of the Convention. Cost sharing in the cost of drugs, medicines and appliances.* In reply to the Committee's previous comments concerning the cost sharing by the victims of employment accidents in the cost of drugs, medicines and appliances prescribed for outpatients, the Government reiterates that the current arrangements for exemption from cost sharing are considered adequate in so far as they protect victims of occupational accidents who may

have difficulty in meeting the cost of prescription charges. The Government considers that the existence of these extensive exemption and charge remission arrangements are intended to ensure that no one in need be deterred from obtaining any necessary medication on financial grounds and indicates that currently 87 per cent of all prescription items are dispensed free of charge. Furthermore, the level of prescription charges is nearly half of that applied, for example, in England or Scotland. *While it takes due note of this information, the Committee is bound to once again recall that any provision envisaging the sharing by the victim of an occupational accident in the cost of prescribed drugs, medicines and artificial limbs and surgical appliances is contrary to the provisions of Articles 9 and 10 of the Convention.* These provisions are intended to prevent workers from having to bear the financial costs resulting from employment injury. *In these circumstances and considering the numerous exemption arrangements that already exist, the Committee considers that the Government should be able to include all victims of occupational accidents, irrespective of their income level, within the category of insured persons exempt from cost sharing so that medical assistance and appliances dispensed to outpatients are provided free of charge to all victims of industrial accidents. The Committee trusts that the Government will re-examine this question and take the measures necessary to ensure the full implementation of the Convention on this point.* In this respect, it also requests the Government to refer to the observation concerning the application of the Convention by the United Kingdom.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 12** (Angola, Bosnia and Herzegovina, Finland, Guinea-Bissau, Haiti, Italy, Malawi, New Zealand, Panama, Peru, Poland, Rwanda, United Republic of Tanzania); **Convention No. 17** (Algeria, Argentina, Burkina Faso, Cape Verde, China: Hong Kong Special Administrative Region, Guinea-Bissau, Haiti, Mozambique, Philippines, Poland, Syrian Arab Republic, United Republic of Tanzania, United Kingdom: Falkland Islands (Malvinas), St. Helena, Zambia); **Convention No. 18** (Benin, Colombia, Djibouti, Mozambique, Pakistan); **Convention No. 19** (Angola, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Colombia, Côte d'Ivoire, Djibouti, Dominica, Dominican Republic, Estonia, Finland, Guyana, Islamic Republic of Iran, Jamaica, Republic of Korea, Lebanon, Malawi, Mexico, Panama, Papua New Guinea, Poland, Sao Tome and Principe, Serbia, United Republic of Tanzania, Thailand, Trinidad and Tobago, United Kingdom: British Virgin Islands); **Convention No. 24** (Algeria, Colombia, Hungary, Poland); **Convention No. 25** (Colombia, Netherlands: Aruba, Poland); **Convention No. 37** (France: French Polynesia); **Convention No. 38** (Djibouti, France: French Polynesia); **Convention No. 42** (France: French Guiana, Guadeloupe, Martinique, New Caledonia, Réunion, Honduras, India, Iraq, Italy, Myanmar, New Zealand, Poland, United Kingdom: Guernsey); **Convention No. 44** (Algeria, France: New Caledonia); **Convention No. 102** (Barbados, Belgium, Costa Rica, Croatia, France, Greece, Iceland, Italy, Libyan Arab Jamahiriya, Mexico, Netherlands, Senegal, Serbia, United Kingdom, United Kingdom: Isle of Man); **Convention No. 118** (Bolivia, Cape Verde, Central African Republic, Denmark, Finland, Guinea, Israel, Libyan Arab Jamahiriya, Madagascar, Mexico, Philippines, Rwanda); **Convention No. 121** (Libyan Arab Jamahiriya, Netherlands, Slovenia); **Convention No. 128** (Barbados, Libyan Arab Jamahiriya, Netherlands); **Convention No. 130** (Libyan Arab Jamahiriya); **Convention No. 168** (Romania, Sweden).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 12** (Netherlands: Aruba); **Convention No. 17** (United Kingdom: British Virgin Islands); **Convention No. 19** (Cyprus, France: French Polynesia, Slovenia); **Convention No. 24** (Austria, Romania, Slovenia); **Convention No. 25** (Slovenia); **Convention No. 44** (United Kingdom); **Convention No. 118** (Sweden); **Convention No. 130** (Costa Rica); **Convention No. 157** (Spain).

## Maternity Protection

### Cuba

#### **Maternity Protection Convention, 2000 (No. 183) (ratification: 2004)**

The Committee notes the Government's first report and the adoption of the new Legislative Decree No. 234 of 2003 on maternity. The Committee notes with satisfaction that section 20 of this Legislative Decree ensures the right of breastfeeding women workers to take one or more nursing breaks which are counted as working hours and remunerated accordingly, in accordance with *Article 10 of the Convention*. The Committee recalls that this matter had been referred to in successive comments within the context of the examination of the application of Convention No. 103. **The Committee requests information on the method of implementation of the Legislative Decree and its application in practice.**

The Committee has referred to a number of other issues in a request addressed directly to the Government.

### Libyan Arab Jamahiriya

#### **Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1975)**

The Committee notes the information supplied by the Government in its report. In its previous comments, the Committee noted with interest that in July 2005, an ILO technical mission visited the Libyan Arab Jamahiriya to assist the Government in resolving difficulties in applying ratified social security Conventions including Convention No. 103. It expressed the hope that with the ILO's assistance, the Government would be able to take the necessary steps to give full effect, in law and in practice, to the provisions of the Convention on which the Committee had been commenting for many years.

*Article 1 of the Convention. Scope of application.* Since 1982, the Committee has been consistently drawing the Government's attention to the need to adopt measures in order to extend the scope of the Labour Code to certain categories of women workers who are excluded from it, 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 state administrations and public bodies, and had asked the Government to take the necessary steps to extend maternity protection to them. In its last report, the Government states that the Social Security Act (Act No. 13 of 1980) does not exempt these categories of women workers from its scope and explains that this text applies to all insured persons.

While duly noting this information, the Committee is bound to reiterate that its comments did not refer to Act No. 13 on social security but to section 1 of the Labour Code, which excludes the abovementioned categories of women workers from its scope. It also notes that the Government's report does not contain information regarding the possible adoption of special regulations concerning these categories of women workers, which was mentioned previously by the Government. **The Committee therefore notes with regret that the Government's successive reports have not supplied the information requested on this matter. The Committee requests the Government to take all necessary measures to meet the Committee's concerns about the coverage of the Convention, while providing detailed information on the way in which women workers excluded from the scope of the Labour Code are provided with the protection laid down in the Convention under Article 3 (maternity leave), Article 5 (nursing breaks) and Article 6 (prohibition of dismissal).**

*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 last report, the Government indicated that the number of foreign women workers in the country in 2005 was 8,713 and that they have expatriate employment contracts and are subject to the social security system. **While noting this information, the Committee requests the Government to state in its next report whether the relevant laws and regulations have been amended so as to provide for compulsory affiliation of foreign women workers to the social security system and to send a copy of the relevant statutory provisions, if any.**

*Article 3, paragraphs 2, 3 and 4. Duration of maternity leave.* In its observation of 2005, the Committee had recalled and reiterated its previous comments that although the Social Security Act provides for the payment of benefits in cash for three months, the Labour Code only provides for maternity leave of 50 days. In its previous observation, the Committee had also noted the Government's statement in its report for 2000 that the incompatibility between Act No. 13 of 1980 on social security and the 1970 Labour Code has been eliminated in the draft of the new Labour and Employment Code which was to be submitted to the General People's Congress for examination and enactment. The Committee also noted that section 67 of the draft provided for maternity leave of 90 days, which may be extended to 100 days where the woman gives birth to more than one child. However, no further mention was made of the draft Labour and Employment Code by the Government in its report for 2001. In its 2004 report, the Government referred to a draft Labour Code, revision of which provides for maternity leave of 14 weeks extendable to 16 weeks in case more than one child is born. The Committee had requested a copy of the new draft of the Labour Code. However, in its last report, the Government has again stated that it will send a copy of the revised Labour Code once it has been enacted. **The Committee therefore once**

*again requests the Government to supply information in its next report concerning enactment of the said draft aimed at harmonizing the provisions of the Labour Code with those of the Social Security Act, so as to ensure that women workers are entitled to the benefits set forth in the Convention. It also hopes that the revised Labour Code will take account of the issues previously raised by the Committee, which read as follows:*

- (a) The Committee recalls that section 43 of the Labour Code makes the granting of maternity leave conditional upon the completion of a qualifying period of six consecutive months of service with an employer, which is contrary to the Convention. The Government indicated previously that, under the terms of section 25 of the Social Security Act, the implementing regulations fix a qualifying period of four months' contributions for entitlement to maternity cash benefits. It added that such a qualifying period is *paragraph 4*, of the Convention. While noting this information, the Committee wishes to emphasize that its comments did not concern the contribution requirements for entitlement to maternity benefit determined by the Social Security Act, but the six months' qualifying period provided for in section 43 of the Labour Code for the granting of maternity leave. ***Since the Convention does not authorize any such requirement for entitlement to leave, the Committee hopes that this requirement will be eliminated in the near future when section 43 of the Labour Code is amended.***
- (b) The Committee once again points out that section 43 of the Labour Code does not provide, as does *Article 3, paragraph 4*, of the Convention, 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. ***The Committee once again expresses the hope that it will be possible to supplement section 43 of the Labour Code by including a provision to this effect.***

*Article 4, paragraphs 1, 4 and 8. Cash benefits.* For many years, including in its observation in 2005, the Committee has been drawing the Government's attention to the need to take all necessary steps 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 shall the employer 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. In its brief response to the Committee's observation in this context, the Government has merely referred to cash benefits provided, inter alia, for the birth of a child under the Social Security Act. ***The Committee therefore reiterates its earlier observation that the Government should state in its next report the measures taken with a view to giving full effect to this provision of the Convention. Furthermore, given the lack of information in this regard, the Committee trusts that the Government will not fail to indicate in its next report whether the regulations implementing section 25 of Social Security Act No. 13 have been adopted and, if so, to provide a copy of them. If not, the Committee again expresses the hope that they will be adopted very shortly and will expressly provide that in the event of the extension of the length of maternity leave in the circumstances envisaged in Article 3, paragraph 4, of the Convention (error in the presumed date of confinement), the period during which the maternity benefit is provided will be extended for an equivalent period.***

*Part V of the report form.* The Committee notes that the Government's report does not contain any information on this point. ***It again requests the Government to provide detailed information on the manner in which the Convention is applied in practice including, for example, the total number of women workers to whom the maternity protection legislation applies, the number of women workers who have benefited from the protection during the reference period, and also supply relevant extracts of reports of the inspection services together with statistics on the number and nature of contraventions reported.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 3** (Gabon); **Convention No. 103** (Zambia); **Convention No. 183** (Cuba, Hungary).

## Social Policy

### Central African Republic

#### **Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)** (ratification: 1964)

1. *Parts I and II of the Convention. Improvement of standards of living.* In its 2005 observation, the Committee requested the Government to provide information on the manner in which the provisions of the Convention had been taken into account in the formulation and implementation of the measures adopted, in the context of its economic programmes and its poverty reduction strategy. In a report received in September 2006, the Government stated that, for more than a decade, no development plan was established. The report solely reiterates that no measures were adopted in relation to the provisions of the Convention. The Committee understands that the Government submitted its status report on the poverty reduction strategy to the International Monetary Fund in November 2006, which includes the following main thrusts: consolidating peace and security; promoting transparency and good governance; sustaining macroeconomic stabilization and reform; increasing the population's access to social services, rehabilitating basic infrastructures and reviving social sectors. The Committee recalls that in the conclusions adopted at the 11th ILO African Regional Meeting (Addis Ababa – April 2007), the tripartite delegations reached consensus for a mainstream assessment of the impact on the generation, and maintenance, of decent work opportunities in poverty-reducing development strategies and to adopt national targets for the creation of sufficient decent jobs to absorb new labour market entrants and reduce by half the numbers of working poor. ***The Committee asks the Government to report in detail on the manner in which the provisions of Articles 1 and 2 of the Convention calling for “all policies” to be “primarily directed to the well-being and development of the population” have been taken into account in the formulation and implementation of an integrated Decent Work Country Programme and its poverty reduction strategy.***

2. *Part IV. Remuneration of workers.* The Committee recalls that, as noted in its previous comments, under the terms of *Article 12 of the Convention*, the maximum amounts and manner of repayment of advances on wages are to be regulated by the competent authority. ***The Committee requests the Government to indicate the progress made in regulating the maximum amounts and manner of repayment of advances on wages.***

3. *Part VI. Vocational education and training.* ***The Committee requests the Government to provide information on the progress achieved in the field of vocational and informal training and, in particular, in primary education.***

4. The Committee intends to pursue consideration of the effect given to Convention No. 117 taking into account the matters closely linked with its application which will be examined, upon receipt in 2008 of the first reports on the implementation of the Employment Policy Convention, 1964 (No. 122), and the Human Resources Development Convention, 1975 (No. 142).

### Democratic Republic of the Congo

#### **Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)** (ratification: 1967)

1. The Committee notes with regret that the Government has provided no information on the application of the Convention since its first report, received in June 2002, which contained some information responding to the comments it has been making since its session of November–December 1996. ***The Committee asks the Government to provide a report containing precise and up to date information responding in particular to the matters raised in its 2005 direct request, which addressed the following matters.***

2. *Parts I and II of the Convention. Improvement of standards of living.* The Committee noted previously that, with support from the World Bank and the International Monetary Fund (IMF), the Government had adopted measures to stabilize the macroeconomic situation and create a climate conducive to the development of the private sector. Access to the Heavily Indebted Poor Countries Initiative in July 2002 allowed the country to benefit from relief for its external financial debt. A Government Economic Programme (PEG), likewise set up with support from the IMF, was implemented from April 2002 to June 2005. ***The Committee trusts that in its next report, the Government will provide information on the manner in which the provisions of the Convention calling for “all policies” to be “primarily directed to the well-being and development of the population” have been taken into account in the formulation and implementation of the measures taken in the context of its economic programmes and poverty reduction strategy.***

3. *Part IV. Remuneration of workers.* With reference to earlier comments, the Committee took note previously of the provisions respecting wages contained in sections 86–118 of the new Labour Code which entered into force in October 2002, and more particularly Chapter V on advances and amounts withheld from wages (*Article 12 of the Convention*). ***The Committee will examine issues relating to remuneration in the context of its regular examination of reports on the application of the Protection of Wages Convention, 1949 (No. 95), which the Democratic Republic of the Congo has ratified.***

4. *Part VI. Articles 15 and 16. Vocational education and training.* 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 requests the Government to indicate the measures taken for the progressive development of education, vocational training and apprenticeship and for the preparation of children and young persons of both sexes for a useful occupation.***

5. The Committee refers to other issues relating to child labour in its comments on the application of the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

## Niger

### **Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1964)**

*Parts I and II of the Convention. Improvement of standards of living.* In its observation of 2005, the Committee asked the Government to supply information on the manner in which the provisions of the Convention had been taken into account in the preparation and execution of measures taken under its economic programmes and poverty reduction strategy. In its report received in October 2006, the Government states that the poverty reduction strategy which has been adopted is above all the expression of a political commitment and that it meets perfectly the concerns expressed by the various groups concerned throughout the preparation process, following a participatory approach involving all interested parties, which makes this strategy the product of a broad national consensus. The Government expresses its determination to reduce poverty levels by half by 2015, pursuing the objective of sustainable growth, which reduces poverty, in particular via durable and ongoing economic growth, the expansion of the productive sectors and the development of basic social services. The Government states that significant advances have been recorded, as indicated by the third report on the implementation of the strategy, in the version approved at the meeting of 10 February 2006, and adds that the process of revising the strategy is going ahead as planned. The Government also sent the text of Decree No. 2006-059/PRN/MFP/T of 8 March 2006 establishing minimum wages for occupational categories of workers governed by the interoccupational collective agreement. Moreover, the country is experiencing a phase of positive economic growth, the increase in GDP having been about 3.3 per cent on average for the 1994–2004 period and 7.1 per cent in 2005, according to estimates sent by the Government to international financial institutions. The Committee understands that, in the context of the poverty reduction strategy, a framework programme is planned with the aim of at facilitating access for young people to initial employment, to put in place a national policy for training and vocational and technical training, and to lay the foundations of a national employment policy. In this regard, the Committee recalls that, in the conclusions adopted at the 11th ILO African Regional Meeting (Addis Ababa – April 2007), the tripartite delegations reached a consensus for a mainstream assessment of the impact on the generation and maintenance of decent work opportunities into poverty-reducing development strategies, and adopt national targets for the creation of sufficient decent jobs to absorb new labour market entrants and reduce by half the number of working poor. ***The Committee asks the Government to supply detailed information in its next report on the manner in which the provisions of Articles 1 and 2 of the Convention, which require that “all policies” to be “primarily directed to the well-being and development of the population”, have been taken into account in the preparation and implementation of an integrated national programme for the promotion of decent work and in the poverty reduction strategy.***

# Migrant Workers

## China

### Hong Kong Special Administrative Region

#### **Migration for Employment Convention (Revised), 1949 (No. 97) (notification: 1997)**

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

1. *Article 6 of the Convention. Equality of treatment.* The Committee recalls that at its 288th Session (November 2003) the Governing Body approved the report of the tripartite committee set up to examine a representation made by the Trade Union Congress of the Philippines (TUCP), under article 24 of the ILO Constitution, alleging non-observance by China of Convention No. 97 with respect to the Special Administrative Region (SAR) of Hong Kong. The allegations related to certain measures approved by the Government of Hong Kong SAR affecting the wages and the social security rights of foreign domestic workers and which were harmful for Filipino workers and in violation of *Article 6* of the Convention. The Governing Body had concluded that the proposed residence requirement of seven years in Hong Kong SAR in order to be eligible to public health-care services would be too long and that the automatic exclusion of foreign domestic helpers from these services would contravene *Article 6(1)(b)* of the Convention. Furthermore, the Governing Body had found that imposing an employees' retraining levy of HK\$400 on the employers of all imported workers and foreign domestic workers whose wages were already the lowest amongst migrant workers, while at the same time reducing the Minimum Allowable Wage (MAW) of these foreign domestic workers with the same amount, would not be equitable.

*Equality of treatment with respect to social security*

2. In its previous observation, the Committee followed up the Governing Body's request to the Government not to implement the proposed measure to apply a residence requirement of seven years and to take the necessary steps to ensure that the social security provisions in the standard contract for foreign domestic helpers and imported workers were strictly enforced. The Committee notes that the Government is still considering the application of a seven-year residence rule to all immigrants for eligibility for public health-care benefits. The Government insists that imported workers and foreign domestic workers would not be affected by this measure because they would continue to be provided with free medical care by their employers under the standard employment contract. The Government adds that foreign domestic workers and imported workers failing to obtain free medical treatment from their employers could always lodge a complaint with the Labour Department or the Labour Tribunal. For those genuinely lacking the means to pay for medical services in public hospitals and clinics, the Social Welfare Department or Hospital Authority has the discretion to waive the fees and charges.

3. While acknowledging the explanations given by the Government, the Committee recalls that the principle of equal treatment under *Article 6(1)(b)* of the Convention concerns equality of treatment with respect to social security of all migrant workers with nationals. It is concerned that while the contractual protections provided with regard to medical treatment may be sufficient in some instances, they may not cover all the instances for which the need to access public health-care services would be indispensable and as such deprive certain migrant workers, especially those with lower wages, from their right to enjoy health-care benefits available to national workers. **Noting that the Government is still considering the details for the implementation of the policy, the Committee urges the Government once again to review its proposal to apply a seven-year residence requirement for eligibility for public health care, especially its impact on the equality of treatment between nationals and non-nationals as regards social security. Please also provide information on the estimated number of imported workers and foreign domestic helpers that are currently making use of public health-care services.**

4. Further to the above, the Committee notes the efforts by the Hong Kong Government to publicize the statutory and contractual rights and benefits of foreign domestic helpers and to help them to lodge complaints. **The Committee asks the Government to provide information on the number of complaints received from imported workers and foreign domestic helpers by the Labour Department with regard to non-compliance with the social security provisions of the standard employment contract, and the remedies provided in case of non-compliance.**

*Equality of treatment with regard to remuneration*

5. In its previous observation, the Committee had followed the Governing Body in its request to the Government to provide information on any planned or ongoing review of the wage and levy policies, taking into account the principle of equality of treatment between nationals and non-nationals laid down in *Article 6(1)(a)* of the Convention, and the principles of proportionality and equity. The Government also has been asked to provide further information on: (a) the wages of local domestic helpers and of local employees in comparable jobs; (b) on any underpayment claims made by foreign domestic workers; and (c) on the impact of the measures taken by the Government to encourage these workers to forward complaints.

6. The Committee thanks the Government for its explanation on the underlying economic reasons for the adopted wage and levy policies but must point out that these explanations had already been taken into account by the Governing Body in its examination of the representation made by the TUCP. The Committee notes the Government's statement that it is not in a position to provide statistics on wages of full-time live-in local domestic helpers as their number is negligibly small and local domestic helpers mostly service households that do not require live-in workers. As for statistics on comparable categories of local employees working in elementary occupations, the Government merely states that they have suffered from a higher wage reduction (16 per cent) than the reduction bore by foreign domestic helpers (11 per cent). **The Committee recalls that in order to reach definite conclusions as to whether Article 6(1)(a) of the Convention is fully applied in Hong Kong SAR, it would need statistical data, disaggregated by sex on the wages of local domestic workers and other local employees in elementary occupations. The Committee therefore urges the Government to provide this information in its next report and to indicate the impact of the abovementioned wage and levy policies on the equality of treatment between nationals, on the one hand, and imported migrant workers and foreign domestic helpers, on the other.**

7. With regard to the points raised by the Indonesian Migrant Workers Union (IMWU), and the Asian Domestic Workers Union (ADWU) in their communication of January 2003 regarding the possible underpayment of foreign domestic helpers as a result of the wage and levy policies, the Committee notes that between June 2002 and May 2004, the Labour Department has handled 287 claims involving underpayment of wages and that 193 of them were subsequently referred to the Labour Tribunal or Minor Employment Claims Adjudication Board. *While appreciating the measures indicated by the Government in its report to encourage foreign domestic helpers to lodge complaints and the assistance provided to these workers in recovering underpaid wages, the Committee would welcome specific information comparing the number of underpayment claims received before and after the entering into force of the abovementioned measures in April and October 2003, and on the number of these claims that have actually resulted in compensation for the underpaid wages of the foreign domestic workers concerned.*

*Equality of treatment with regard to conditions of work*

8. With regard to comments by the IMWU and the ADWU on the vulnerability of foreign domestic workers, especially Indian, Indonesian and Sri Lankan domestic workers, to physical, mental and sexual abuse and violations of their standard employment contract, the Committee notes the commitment expressed by the Government to step up the protection of the labour rights of foreign domestic workers. It also notes the information provided by the Government on the sentences imposed on a number of employers for abusing foreign domestic workers, and on measures taken to raise awareness amongst employers and migrant workers with respect to their contractual and statutory rights and obligations. *The Committee asks the Government to continue to provide information on the measures it is taking to prevent and punish abuse of migrant workers, especially foreign domestic workers, and the impact of these measures on their conditions of work. Please also provide information on the number and nature of complaints received by the Labour Department, the Police and Immigration Department, and the Labour Tribunal, as well as the penalties imposed and the remedies provided.*

*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.

## Kenya

### **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** (ratification: 1979)

*Articles 10, 12(d) and 14(a) of the Convention. National policy on equality of opportunity and treatment and free choice of employment.* The Committee recalls its previous observation in which it raised concerns about the existence of a policy of “Kenyanization” of employment referred to by the Government. The Committee considered that such a policy was contrary to the principle established by the Convention of equality of opportunity and treatment between national and foreign workers provided that the latter are residing lawfully in the country of employment. The Committee notes the Government’s statement that the “Kenyanization” policy, which was initiated after independence in 1963 and aimed at correcting the existing racial imbalance in the various sectors of employment, was dissolved in 1981 after having achieved its objectives. The Committee is aware that Parliament passed a number of employment-related bills in October 2007, including the new Employment Act. The Committee recalls that according to *Article 12(d)* of the Convention, any provisions or administrative practices incompatible with the policy of equality of treatment and opportunity must be amended. *The Committee hopes that the new employment legislation will reflect the principle of the Convention concerning equality of opportunity and treatment between migrant workers and nationals with respect to access to employment. It asks the Government to specify the legislative and policy measures that have been taken to bring its national policy and practice into conformity with the Convention and to ensure that migrant workers who are lawfully in the country enjoy equality of treatment with nationals regarding free choice of employment in accordance with Articles 10 and 14(a) of the Convention.*

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

## Malaysia

### Sabah

### **Migration for Employment Convention (Revised), 1949 (No. 97)** (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 6, paragraph 1(b), of the Convention.* For many years now, the Committee has been pursuing a dialogue with the Government regarding differences in treatment between nationals and foreign workers with respect to payment of social security benefits. The Committee had considered that the transfer of foreign workers working in the private sector from the Employees’ Social Security Scheme (ESS) to the Workmen’s Compensation Scheme was not in conformity with *Article 6, paragraph 1(b)*, of the Convention as, under the new scheme, foreign workers were provided with a lump sum and no longer with a monthly payment. A review of the two schemes had also shown that the level of benefits in case of industrial accident provided under the ESS was substantially higher than that provided under the Workmen’s Compensation Scheme. The Committee regrets to note that the Government merely continues to state its main arguments for introducing the lump-sum system of payment, without giving elements of a detailed comparison of the benefits which would be awarded according to each system in identical circumstances.

*The Committee trusts that the Government will make every effort to demonstrate in its next report that migrant workers do not receive treatment which is less favourable than that applied to nationals. It hopes in particular that the Government's report will contain full information on the action taken to ensure that the lump sum corresponds to the actuarial equivalent of the periodical payments provided to nationals under the ESS, as well as information comparing the benefits which would be awarded according to each system in identical circumstances.*

*The Committee also refers the Government to the comments made under Convention No. 19 with respect to Peninsular Malaysia and Sarawak.*

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

## New Zealand

### **Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1950)**

The Committee notes the comments by the New Zealand Council of Trade Unions (NZCTU) and of Business New Zealand (Business NZ) attached to the Government's report, as well as the Government's reply thereto.

1. *Articles 4 and 5 of the Convention. Measures to facilitate reception of migrants and adequate medical attention.* The Committee notes the comments made by the NZCTU that greater health support and resources for refugees are needed to enable certain migrants, especially refugees, to recover substantially from the effect of previous injuries, illness and trauma before being engaged in job search activities. The NZCTU also draws attention to the high number of women refugees suffering from post-traumatic stress disorder as well as physical injuries and illness as a result of previous ill-treatment. The NZCTU further maintains that the New Zealand Settlement Strategy mainly focuses on migrants from Asia and recent refugees but does not mention those coming from Africa. The Committee notes the Government's reply that government-funded assistance, provided directly or purchased from service providers, caters for the needs of all migrants and refugees, including those from Africa, provided they have permanent residency. The New Zealand Settlement Strategy recognizes that certain migrants and refugees may require additional assistance, especially in the early stages of settlement. The Committee recalls that *Article 5(b)* of the Convention aims to ensure that migrant workers and members of their families enjoy adequate medical attention and that services are available for them to consult should they so require. Paragraph 12 of the Migration for Employment Recommendation (Revised), 1949 (No. 86), also provides that steps should be taken where necessary to ensure that special facilities are made available during the initial period of settlement in the country of immigration. ***The Committee asks the Government: (1) to provide further details on the type of additional assistance that may be given to certain migrants and refugees, in particular women and migrants coming from Africa; and (2) to indicate whether any measures are being taken or envisaged to provide special services upon arrival and during the initial settlement stage to enable migrants, especially women refugees, to recover from previous illness and trauma due to ill-treatment before engaging in job search activities.***

2. *Article 6(1)(b). Equality of treatment with respect to social security.* The Committee notes that the NZCTU, while welcoming the Government's new Recognized Seasonal Employment (RSE) Scheme, raises some concerns that there is no obligation for employers to provide medical insurance for their foreign workers under this scheme. Greater clarity is therefore needed with respect to the responsibility for costs of medical treatment for participants in the RSE Scheme, and for temporary migrant workers in general. The Committee notes that the RSE Scheme was introduced in April 2007 to meet the labour needs of the horticulture and viticulture industries and permits workers to enter New Zealand for a seven-month work period in any 11-month period. However, apart from the costs arising from accidents and injuries under the universal Accident Compensation Scheme, the RSE Scheme does not appear to provide any social security benefits. Seasonal workers, according to the NZCTU, also appear to pay income tax at the same level as permanent residents, but do not have equal access to full public health services due to the residency requirement of two years for entitlement to access to publicly funded health services. While they may have the opportunity to return to New Zealand the next season for a seven-month period of work, they nevertheless seem to be excluded forever from accessing social security benefits and thus would not be treated on an equal footing with nationals or permanent residents with respect to social security. The Committee recalls that *Article 6(1)(b)(ii)* of the Convention allows certain limitations to the principle of equal treatment such as special arrangements concerning benefits payable wholly out of public funds. However, these arrangements cannot be interpreted as providing a legal basis for permitting the automatic exclusion of a category of migrant workers from qualifying from social security benefits (see paragraph 431 of the General Survey of 1999 on migrant workers). The main purpose of the exceptions permitted under the Convention is to prevent possible abuses and to safeguard the financial balance of non-contributory schemes, rather than depriving certain categories of migrant workers, i.e. workers under the RSE Scheme, from rights derived from the Convention. The Committee notes that the RSE Scheme will be reviewed by the end of 2007 and that the Government may propose that medical insurance cover be made compulsory if significant health risks are indicated. ***The Committee asks the Government on the occasion of the revision of the RSE Scheme to reflect on possible special arrangements allowing seasonal workers to access on an equal footing with nationals and permanent residents the benefits ensured by Article 6(1)(b) of the Convention, and to report on the progress made.***

3. Further to the above, the Committee recalls its previous comments in which it noted that section 74A(1) of the Social Security Act, No. 136 of 1964, as amended, might exclude some temporary permit holders from accessing any cash benefits, including emergency benefits. The Committee notes the NZCTU's comments that despite paying income taxes, temporary workers do not have access to full public health services. They generally have access to accident and emergency care but may be subsequently charged for these services. The Committee notes the Government's explanations that all workers who have permits enabling them to be in New Zealand for two years or more are entitled to access publicly funded health-care services. The ordinary residency requirement of two years before becoming eligible for cash benefits, other than the emergency benefit, applies to all prospective beneficiaries and includes, for example, New Zealand citizens by descent, who must have lived, at some stage, in New Zealand for two years to be eligible to access standard income support. The Government further states that these types of social security benefits are paid entirely from public funds and the acquisition of the right to such benefits is entirely dependent on a permanent commitment to New Zealand. However, anyone who is acutely unwell must be treated, regardless of immigration status, eligibility for publicly funded health care or ability to pay. The Government confirms, however, that migrant workers who have chosen not to take out medical insurance to cover for sickness would be charged for the health services they use. The Committee recalls its comments under paragraph 2 of this observation as well as the fact that the imposition of residency requirements is not contrary to the Convention, in so far as this condition is applicable also to nationals of the State, which does not appear to be the case. ***The Committee considers that the qualifying period of two years for migrant temporary workers to access social security benefits may put them in a less favourable position as compared to nationals and permanent residents. It, therefore, asks the Government to provide explanations as to the reasons for fixing a two-year qualifying period for entitlement to access to publicly funded health-care services.***

4. *Article 6(1)(a)(i). Equality of treatment with respect to conditions of work.* The Committee notes that the NZCTU raises concerns regarding migrant workers who had apparently paid large sums to recruitment agencies in Thailand before coming to New Zealand for horticulture work and who complained about being required to work 60–70 hours per week without days off and being paid the minimum wage. The NZCTU also refers to below minimum wages being paid to migrant workers in horticulture and viticulture, in food service, and other services industries. The workers seldom make a formal complaint and their legal status is not known but it is suspected that some work illegally or on a limited work permit which could be revoked, a type of situation which makes it more difficult for the workers to seek information or to complain about exploitation. The Committee notes the Government's reply that breaches of employment legislation and regulations, including payment of wages which are below the minimum wage, are actively investigated; employers are liable to recovery and penalty action, irrespective of whether the employees affected are migrant workers or nationals. ***The Committee asks the Government to examine the situation of migrant workers in the horticulture and viticulture sectors as well as in the food and other services industries with a view to addressing possible situations of abuse with regard to working conditions and unpaid wages. Please also provide information, disaggregated by sex, on any violations detected or complaints received by the labour inspectorate and any decisions handed down by courts or other tribunals involving violations of Article 6(1)(a)(i).***

5. *Discriminatory attitudes of employers limiting employment options for migrants.* The Committee notes that the NZCTU raises concerns regarding employers' prejudices vis-à-vis migrants from countries with a primary language other than English as well as migrants whose appearance and name signal foreign ancestry. The NZCTU refers to surveys conducted with employment agencies showing that a foreign sounding name could reduce the likelihood of a job applicant being able to get a job interview. While government and community services are working with migrant groups to provide work experience opportunities and to enhance language skills, more work needs to be done to encourage employers to overcome their prejudices against migrant workers. ***The Committee, concerned that these alleged employers' prejudices result in direct and indirect discrimination of migrant workers in employment, draws the attention of the Government to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).***

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

## Uganda

### ***Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (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 recalls its previous observation in which it expressed concern over the slow progress made with respect to the adoption of legislation that would include measures against clandestine migration movements and provide for equal treatment and opportunity between migrant workers and nationals. The Committee had expressed the hope that the revised legislation would also impose penal sanctions against the organizers of clandestine movements of migrants or against those who employ such workers, in accordance with *Articles 3(b) and 6(1) of the Convention*, and that it would ensure that migrant workers have free choice of employment in accordance with *Articles 10 and 14(a) of the Convention*. The Committee notes the Government's statement that the new Employment Act, which is currently awaiting Presidential assent, will cover the concerns raised by the Committee, and that a copy of the text will be supplied to the Office. ***The Committee looks forward to receiving a copy of the new Employment Act and hopes that it will be able to note at its next session significant progress with respect to the matters raised above.***

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

## **Bolivarian Republic of Venezuela**

### ***Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*** ***(ratification: 1983)***

1. *Articles 10 and 14(c) of the Convention. Equality of opportunity and treatment.* For a number of years, the Committee has been following up on compliance with the recommendations that were made by the Governing Body in its report on the representation submitted by the International Organisation of Employers (IOE) and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) in May 1993 (GB.256/15/16). In these recommendations, the Government had been invited to take appropriate measures to repeal or amend the provisions of sections 27, 28, 30 and 317 of the Organic Labour Act of 1990, in the light of the principle of equality of opportunity and treatment between national workers and migrant workers, established under *Article 10* of the Convention.

2. The Committee notes that sections 27, 28, 30 and 317, which have been reproduced in the Organic Labour Act (19 June 1997), continue to impose recruitment conditions, and establish a 10 per cent limit on foreign workers in the enterprise and a 20 per cent limit on the overall wages paid to such workers. It also notes the Government's statement that *Article 14(c)* of the Convention gives authorization to "restrict access to limited categories of employment or functions where this is necessary in the interests of the State". The Committee reminds the Government of the Governing Body's report on the representation (GB.256/15/16, 1993), which recalls that the Convention does not undermine the right of the State to admit or refuse the entry of a foreigner on its territory, a decision which may be taken in respect of the need to protect national workers, but that "equality of opportunity and treatment, which must be declared and guaranteed by the State, is not compatible with measures which would seek to establish distinctions between migrant workers legally within the territory of a State and national workers in the spheres covered by the Convention, both at the national level and the level of the enterprise". The Committee also points out that the measures contemplated in the sections of the Organic Labour Act of 1997, the amendment of which has been requested by both the Governing Body and the Committee, are abstract measures which are not covered by *Article 14(c)* of the Convention and are therefore contrary to the principle of equality of opportunity and treatment between migrant and national workers.

3. *Trade union rights.* The Committee recalls section 404 of the Organic Labour Act of 1990, reproduced in the Organic Labour Act of 1997, which establishes that "foreigners who have resided in the country for more than ten years may, subject to the approval of the ministry concerned, become a member of the management committee of a trade union and hold representative trade union office". The Committee notes that, according to section 120 of the new Decree No. 4447 of 28 April 2006 implementing the Organic Labour Act, foreign workers may join the management committee of a trade union and hold representative trade union office without prior approval, when thus provided for by the statutes of the trade union organization. Although the regulations appear to be less restrictive than the Act, the Committee points out that the trade union rights of foreign workers must not be conditional upon their recognition in trade union statutes or subject to ministerial approval but guaranteed under legislation. The Committee further notes that a draft amendment to the Organic Labour Act reduces from ten to five years the time of residence for a foreign worker to become a member of a management committee of a trade union or to hold trade union office, which would be acceptable under the Convention. The Committee refers in this regard to its comments on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

4. The Committee regrets that little progress has been made in the adoption of measures, in consultation with the employers' and workers' organizations, to give effect to the principle of equality of treatment between nationals and migrant workers.

5. *Noting that the Organic Labour Act is being amended, the Committee urges the Government to repeal or amend the provisions of its sections 27, 28, 30, 317 and 404, taking into account the comments made by the Committee of Experts in follow-up to the abovementioned representation, so as to bring national legislation into line with the Convention. The Committee asks the Government to provide detailed information in this respect.*

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

## **Zambia**

### ***Migration for Employment Convention (Revised), 1949 (No. 97)*** ***(ratification: 1964)***

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

For several years, the Committee has been emphasizing the need to amend the Second Schedule to the Zambia National Provident Act in order to ensure to *all* foreign workers lawfully within the territory, and not only to those residing permanently,

treatment that is no less favourable than that which is applied to its nationals in respect of social security, in accordance with Article 6, paragraph 1(b), of the Convention. The Committee notes the information that Act No. 40 of 1996 respecting the national pension scheme has transformed the National Provident Fund into a national pension scheme, which became operational on 1 February 2000. *The Committee regrets that the Government has not indicated in its report whether or not this new Act has taken its comments into account and that it has not provided a copy of the above Act. The Committee also notes that the ILO technical assistance project in the field of social security has come to an end. The Committee would be grateful if the Government would provide a copy of Act No. 40 of 1996.*

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

The Committee is addressing a request directly to the Government on other matters.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 97** (Algeria, Bahamas, Barbados, Belize, China: Hong Kong Special Administrative Region, Cuba, Cyprus, Dominica, France, Grenada, Guatemala, Guyana, Jamaica, Kenya, Malawi, Mauritius, New Zealand, Nigeria, Saint Lucia, Serbia, Slovenia, Spain, United Republic of Tanzania: Zanzibar, United Kingdom: Anguilla, British Virgin Islands, Montserrat, Uruguay, Bolivarian Republic of Venezuela, Zambia); **Convention No. 143** (Cyprus, Guinea, Kenya, San Marino, Serbia, Slovenia, Togo, Bolivarian Republic of Venezuela).

## Seafarers

### Barbados

#### **Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1967)**

The Committee notes the Government's latest report, as well as 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 further noted from the Government's report 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 charged to do so. The report 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 20 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, however, 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 it 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 it of any consultations held and of any steps taken or envisaged with a view to ratifying Convention No. 185.***

### 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 Navy Code, noting that they provide for the adoption of regulations on occupational safety and health. The Government also 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 points out that Guinea ratified this Convention 28 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 provisions of the Convention. ***Consequently, the Committee once again expresses the hope that the Government will make every effort to ensure that 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. 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. The Committee also asks the Government to provide general information on the manner in which the Convention is applied, supplying extracts of reports by the 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.***

## Honduras

### **Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1960)**

The Committee notes the detailed information contained in the Government's report. It nevertheless draws the Government's attention to the following point.

*Article 4 of the Convention. Specimen of the seafarers' identity document. As the Government has only provided a photocopy of the seafarers' identity book, and not a specimen, the Committee once again requests the Government to provide with its next report a specimen of the seafarers' identity document.*

## Liberia

### **Seamen's Articles of Agreement Convention, 1926 (No. 22) (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 Government's statement in its report that the Committee's comments have been referred to the Bureau of Maritime Affairs with instructions that the commission should review the provisions of the maritime laws and regulations with the aim of having them conform with the provisions of the Convention. *The Committee hopes that the necessary measures will be taken to apply the Convention in law and in practice and that the Government will provide full particulars on any progress achieved, taking into consideration the Committee's comments since 1995 on Article 3, paragraph 4, Article 9, paragraph 2, Article 13 and Article 14, paragraph 2, of the Convention.*

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

### **Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1960)**

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

*Article 1, 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 seaman in cases of sickness or accident while he is off the vessel provided that he 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.*

*Article 6, paragraph 2.* The Committee noted that, contrary to this provision of the Convention, the approval of the competent authority is not required when a sick or injured seaman has to be repatriated to a port other than the port at which he was engaged, or the port at which the journey commenced, or a port in his own country or the country to which he belongs. Under section 342-1(b) of the Maritime Law, agreement between the seafarer and the master or shipowner suffices. The Government states that if there is agreement between the parties, administrative authorization is not necessary but that, in the event of disagreement, the parties may submit the matter to the Commissioner of Maritime Affairs by virtue of section 359 of the law. *The Committee wishes to draw the Government's attention to the need to include provisions in its legislation making it compulsory to seek the approval of the competent authority when the parties agree to a port of repatriation other than those laid down in Article 6, paragraph 2(a), (b) or (c), of the Convention.* In fact, the provisions of this Article of the Convention are designed to protect a sick or injured seafarer by preventing the master or the shipowner imposing on him a port of repatriation other than the port at which he was engaged, the home port of the vessel or a port in his own country or the country to which he belongs, without the approval of the competent authority; in the event of disagreement between the parties, an appeal to a conciliation authority is not sufficient in itself.

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

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

In its previous comments, the Committee noted that section 326(1) of the Maritime Law, as amended, set 15 years as the minimum age for admission to employment or work on Liberian vessels registered in accordance with section 51 of the Maritime Law. Noting however that section 326(3) permits persons under the age of 15 to occasionally take part in the activities on board such vessels, the Committee has requested the Government in comments repeated since 1995 to indicate how such special employment is limited to persons of not less than 14 years of age, taking into account all the conditions set forth in *Article 2, paragraph 2, of the Convention.*

*Noting that the Government has submitted the matter to the Commissioner of the Bureau of Maritime Affairs with the instruction that the necessary steps be taken to make the required information available, the Committee hopes that such information will soon be provided.*

*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: 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:

*Please refer to the comment made under the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).*

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

In the 89th Session of the International Labour Conference 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 International Labour Conference, the Committee reiterates the crucial importance of submitting first reports on the application of ratified Conventions and 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 Convention No. 92 and Convention No. 133. The Committee notes, in particular, the Government's indication that the ship "Sea Launch Commander" serves as the command ship, i.e. "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 seagoing. 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 in port 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 envisioned 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 that the NUME complaint is neither appropriate nor applicable to the "Sea Launch Commander", and its "statement of claim" to the ILO is, therefore, without merit.

The Committee recalls that Convention No. 133 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, which is registered in a territory for which this Convention is in force (*Article 1, paragraph 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, paragraph 2*). Under *Article 1, paragraph 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" under national laws or regulations is regarded 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.*

## **Malta**

### **Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16) (ratification: 1965)**

The Committee notes with satisfaction that the Merchant Shipping (Medical Examination) Regulations, 2001, have been amended by Legal Notice 150 of 2002. Regulation 6(2) now provides that the maximum period of validity of a medical certificate issued to persons under 18 years of age shall be one year, thus bringing the national legislation into conformity with the Convention.

## Mexico

### **Seamen's Articles of Agreement Convention, 1926 (No. 22)** (ratification: 1934)

The Committee takes note of the information sent by the Government in its report. It draws the Government's attention to the following points.

*Article 9, paragraph 1, of the Convention. Termination of the contract.* In reply to the Committee's previous comments, the Government merely states that it has no knowledge of the initiative of the Confederation of Mexican Workers (CTM) for the amendment of section 209 III of the Federal Labour Act. The Committee points out that it has been asking the Government for more than 30 years to amend this provision, under which it is unlawful to terminate the employment relationship when the vessel is in foreign waters. The Convention, on the contrary, provides that an agreement for an indefinite period may be terminated by either party in any port where the vessel loads or unloads provided that notice has been given which shall not be less than 24 hours. **Consequently, the Committee again asks the Government to take all necessary steps to ensure that the contract may be terminated at any time by either party provided that the notice specified has been given.**

*Article 14, paragraph 1, and Article 5. Discharge of the seafarer.* The Committee noted previously that the seafarer's document, issued in accordance with Article 5 of the Convention, provided no space to enter the discharge of the seafarer and the duties he performed on board. It accordingly asked the Government to take the necessary steps to give effect to these provisions. **Since there is no response in the report, the Committee again asks the Government to take the necessary steps to ensure that the seafarer's discharge is recorded in the document and that no statement may be included in the document as to the quality of the seafarer's work or as to his wages.**

*Article 15 and Part V of the report form. Application of the Convention in practice.* Further to the CTM's comments to the effect that no inspections are carried out due to the lack of resources available to the inspections services, the Committee requested the Government to reply to these observations. By way of a response, the Government merely states: (i) that the CTM has not sent the additional information it had requested on the matter; and (ii) that since January 2005, no breaches of the Convention had been reported in the 21,779 regular inspections of general working conditions carried out in all the workplaces under Mexican Federal jurisdiction.

According to the Convention, "national law shall provide the measures to ensure compliance with the terms of the present Convention". This means not only setting up an inspection service but also providing the necessary resources for it to function. **The Committee accordingly asks the Government to provide information on the organization and working of the inspection services, on the number of inspectors employed in them, and on the measures taken to ensure proper performance of their duties. The Government is also asked to supply information on the exact number of inspection visits carried out in the maritime sector.**

## Netherlands

### **Seafarers' Hours of Work and the Manning of Ships Convention, 1996** (No. 180) (ratification: 2003)

#### **Government response to 2004 observations of the MHP**

The first subject of concern of the Trade Union Confederation of Middle Categories and Senior Staff Unions (MHP) was the practice of keeping two work records: one showing a "proper" number of hours worked for inspection purposes, and the other showing the hours effectively worked. In its 2005 report, the Government again concedes that the current system often represents a "paper reality" because of the difficulty of proving any violations by the inspectorate, and refers to the efforts of the Enforcement Department to elaborate a more effective strategy to verify whether the recording under the Working Hours Transport Decree corresponds with the management operations. **The Committee asks the Government to provide details as to the strategy being developed by the Enforcement Department to more effectively verify records and detect infringements of provisions governing hours of rest, the application of this strategy in practice and the results achieved.**

In reply to the MHP observations, the Government states that the policy of the Netherlands Administration with respect to the examination of records is to continue to carry out random inspections on board ships flying its flag. Before a safe manning document is issued, the inspection ascertains the quantity and quality of the proposed composition of the crew, duly taking into consideration the requirements of the Convention. With a view to further harmonizing and strengthening the system, a computer program is now being developed, which will assist both the shipowner and the inspectors in defining an adequate crew composition. **The Committee requests the Government to keep it informed on the development and finalization of the computer program to assist in determining adequate manning levels, its application in practice and the results obtained.**

The latest government report again indicates that, when discovering violations, the respective shipowner is contacted, and the sanction often consists of warnings. With regard to shipowners who often violate the rules, the manning

plan is brought up for discussion and this may result in an adjusted manning certificate. The Government states, however, that, in practice, this “sanction” is hardly ever applied because of the burden of proof, the proof that violations of the Working Hours Transport Decree can only be solved by additional crew being often impossible. The Committee draws the attention of the Government to the fact that, under *Article 10 of the Convention*, it is sufficient that “records or other evidence indicate infringements of provisions governing hours of work or hours of rest” for the Government to require that measures are taken, including the revision of the manning of the ship. Furthermore, according to *Article 11*, the competent authority is required to take into account the need to avoid or minimize, as far as practicable, excessive hours of work, to ensure sufficient rest and to limit fatigue, when determining, approving or revising manning levels. ***The Committee therefore asks the Government to indicate by what means it is ensured that, as required by Article 10, if records or other evidence indicates infringement of provisions governing hours of rest, the competent authority takes the appropriate action to avoid future infringements, including, where necessary, the revision of the manning of the ship. Please also indicate cases where infringements have led to a revised manning of the ship or other preventive measures.***

Furthermore, the Government states in reply to the MHP comments that measures are under development to create a special position within the law for a confidential person whom masters can contact in case of complaints. This person will act as an intermediary between the master and the inspector and/or shipowner without disclosure of the identity of the master filing the complaint. In its latest report, the Government again refers to the procedure provided for in the Manning Act obliging the master to inform the shipping inspectorate, if the shipowner provides insufficient means to sail safely, and indicates that, in practice, masters are not making use of this procedure, and regular complaints from informal channels remain anonymous due to understandable self-protection. ***Please supply information on any progress achieved towards providing for a confidential intermediary person between the master and the inspector and/or shipowner, and the practical results obtained. The Committee asks the Government to take all required steps to ensure that complaint procedures contain the necessary safeguards (e.g. confidentiality, prohibition of victimization etc.) to avoid negative consequences for persons making use of such procedures. Furthermore, the Committee requests the Government to describe the procedures in place to investigate complaints relating to hours of rest.***

The second subject of concern of the MHP was the six hours on/six hours off system. In reply to the MHP observations, the Government feels that fatigue on board ships, which might have been the cause of certain accidents, is still not clearly attributable to that system, and indicates that the Ministry of Transport is preparing a study on this subject. In the Government’s view, as long as no unambiguous relation is demonstrated between fatigue and the six hours on/six hours off system, any expectations that the number of accidents on board would decrease if this system was abolished, are premature. The Government believes that the level of organization of ships applying the six hours on/six hours off system is such that this can be done without safety or health risk. ***The Committee requests the Government to keep it informed on the progress of the study undertaken by the Ministry of Transport concerning the link between fatigue and the system where the watchkeeping responsibilities are undertaken by only two officers (six hours on, six hours off). With respect to ships registered in the Netherlands that operate on a six hours on/six hours off system, the Committee asks the Government to indicate: (i) what measures have 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; (ii) whether the examination of the records of such ships has revealed infringements of the requirements of the Convention relating to hours of rest; and (iii) what measures have been taken on such ships to avoid future infringements.***

### **MHP observations**

The Committee notes an observation of 2005 forwarded by the MHP to the Ministry of Social Affairs and Employment and containing information received from the Netherlands Association of Merchant Navy Captains (NVKK). In the absence of a reply to this observation, the Committee draws the Government’s attention to the following points.

The NVKK feels that work records do not protect seafarers from working too many hours. In the past, neither the shipowner nor the operator complained because of the extra hours worked by the existing crew, given that one or two extra crew could be saved. These extra hours were not included in the pro forma records completed to present to the authorities and everybody, including the relevant seafarers, used to silently agree, since overtime is a well accepted phenomenon in the shipping industry. According to the NVKK, this tendency has, however, gone too far. With existing manning scales brought down to a minimum and an ever-increasing workload, circumstances on board some ships have become almost unbearable. People are working themselves “in a frenzy”, and ships have to sail, whatever the condition of the crew. The NVKK also questions the implementation and control of measures from administrations, that are in place to safeguard rest periods of duty officers before they go on watch. Remarks or complaints from responsible persons, such as masters, are regularly not taken into account, and experience has shown that use is hardly made of existing complaints procedures. As to the system of six hours on/six hours off, the NVKK indicates that it only works when officers designated for watch have no other duties and, thus, could never involve a master who truly executes his responsibilities according to the Code of Commerce. According to the NVKK, the system of six hours on/six hours off is being maintained by a number of short-sea container and tanker operators, the profitability of which would be seriously affected by a legal obligation to employ another deck officer. The NVKK regrets that a recent proposal to the IMO to introduce

legislation for a minimum of two duty officers on every seagoing vessel, has been turned down because profit-making (or profit-keeping) sides can decide on important issues, such as safe manning of seagoing ships.

The NVKK further draws attention to short-sea vessels with a schedule of a week with seven ports of call, which sometimes have to shift berths several times during port stay. With all other duties to be performed in addition to navigation, seafarers on board these ships cannot catch enough sleep, and, if this goes on for weeks and even months, overtiredness turns into fatigue. The NVKK calls for action with regard to these vessels and further indicates that it will contribute to the study initiated by the Government into the causes and consequences of fatigue in the shipping industry, given the need to protect seafarers from unhealthy practices and to promote safety at sea.

*The Committee requests the Government to comment on the NVKK observations submitted by the MHP in 2005.*

#### **Observations of the VNO–NCW**

The Committee notes the observations submitted in 2005 by the Confederation of Netherlands Industry and Employers (VNO–NCW), containing information received from the Royal Association of Netherlands Shipowners (KVNR). These observations have been transmitted to the Government for any comments it wished to make. In the absence of a reply, the Committee draws the Government’s attention to the following points.

The KVNR generally agrees with the Government’s reply to the MHP comments. Concerning the first subject of concern, however, it objects to the qualification “paper reality” and disagrees with the statement concerning double instructions given by the shipowner/operator to the master, as not supported by clear evidence and never expressed before by the Dutch maritime administration. In the KVNR’s view, a good work planning, a well-considered way of managing the crew and delegation of tasks can be used as instruments to make on board operations comply with the Convention and the Working Hours Transport Decree in case of a high workload. Given the open relationship between Dutch employers and employees, a two-way communication about workload should not be problematic and is also facilitated by the Safety Management System (ISM) of the shipping company. The use of a complaint procedure should thus be seen as the ultimate measure. As regards compliance with the Convention and the Working Hours Transport Decree, the KVNR points out that a master has his own responsibility and role in the organization and the ISM of the shipping company. Also, employees have their own responsibility for keeping proper records.

Concerning the second subject, the KVNR claims that the two-watch system has been in place on smaller ships for decades and disagrees with the remark of the NVKK that, in the past, three or four persons were available for watchkeeping. The KVNR indicates that the performance of ships operated with a two-watch system do not give reason to believe that such a system cannot be operated safely. No ship is operated with a two-watch system without approval by the maritime administration in the Netherlands. Furthermore, regular inspections are carried out by flag State and port State authorities to check compliance with these instruments. The KVNR also rejects the Government’s comment that “fatigue on board ships is nowadays a well known phenomenon” stating that in every 24-hour industry – such as shipping – fatigue is a phenomenon to be aware of. In this regard, the IMO Guidelines on Fatigue of 2001 give guidance to all parties involved and recognize that fatigue is a complex issue that can have many causes, which may fall outside the scope of safe manning and watch systems. Finally, the KVNR agrees with the Government’s view that more broad and in-depth study is needed before any conclusions can be drawn on fatigue in shipping.

*The Committee requests the Government to comment on the KVNR observations submitted by the VNO–NCW.*

In addition, the Committee is raising certain technical matters in a request addressed directly to the Government.

## **Panama**

### ***Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1971)***

The Committee notes the information in the Government’s report, in particular concerning *Article 2(a) and (b) of the Convention* and also *Parts IV and V of the report form*. It draws the Government’s attention to the following points.

*Article 1 of the Convention. Social security coverage for apprentices.* The Government indicates that the work placement required for apprentices, as part of their vocational training, is excluded from the application of Legislative Decree No. 8 on work at sea and on navigable waterways and also from Convention No. 55, as apprentices are not employed on board vessels. For this reason, schools and universities are responsible for insuring apprentices against accidents and sickness before they board any vessel. Without this coverage, apprentices are unable to undertake their work placement. Under the terms of section 9 of Cabinet Decree No. 68 of 30 March 1970 centralizing insurance coverage against occupational risks, however, apprentices are regarded as workers in the context of occupational risk insurance, even though they are not paid. *The Committee therefore requests the Government to indicate once again the exact provisions of the national legislation which govern social security coverage for apprentices in the case of sickness or accident and to send a copy thereof.*

*Article 5, paragraph 1(a). Payment of wages to seafarers remaining on board in the event of an accident.* Section 89 of Legislative Decree No. 8 covers the payment of wages to seafarers remaining on board in the event of sickness. According to the Convention, however, wages must also be paid in whole or in part to seafarers “where the injury results

in incapacity for work". Title I of Chapter VII of this Legislative Decree, relating to the shipowner's obligations in cases of accident, does not contain any provision on this point. **The Committee therefore requests the Government to indicate the provisions of the national legislation which oblige the shipowner to pay wages in whole or in part to seafarers remaining on board who are incapable of working as a result of an accident.**

*Article 5, paragraph 1(b). Payment of wages after landing (sickness and accident).* The Government states that the regulations implementing Legislative Decree No. 8 are currently being adopted. It also indicates its intention to ratify the Maritime Labour Convention, 2006 (MLC). The Committee reminds the Government that Standard A4.2 of the MLC also provides that the shipowner is obliged to pay wages in whole or in part in respect of a seafarer no longer on board for a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness of the seafarer. **The Committee hopes that the new regulations will therefore contain provisions relating to payment by the shipowner of the seafarer's wages for a minimum period of 16 weeks from the day of the injury or the commencement of the sickness of the seafarer.**

*Article 7, paragraph 1. Funeral expenses in the event of the death of a seafarer on board (sickness and accident) or on shore (accident).* The Government refers, as in the case of *Article 5, paragraph 1(b)*, of the Convention, to the regulations implementing Legislative Decree No. 8, which are currently being adopted, and to its intention to ratify the MLC. **Since the MLC also contains provisions concerning the coverage of burial costs for seafarers, the Committee hopes that the new regulations will at least contain provisions concerning the coverage of funeral expenses by the shipowner in the case of the death of a seafarer occurring on board or on shore during their period of employment.**

*Article 9. Rapid and inexpensive settlement of disputes.* The Government indicates that no maritime labour tribunals have yet been established. Hence, disputes between shipowners and crew members are handled by the Department of Labour Affairs of the Maritime Authority of Panama. In the event of disputes arising abroad, consular offices merely collect the international complaints submitted by seafarers or shipowners and, in the event of legal proceedings, supply all types of administrative documents requested by the lawyers. However, the Government explains that, even though there is no other procedure in this field, consultations are held in order to find a speedy solution. **The Committee requests the Government to keep it informed of the results of these consultations and asks it once again to supply further details in its next report of the average time currently taken by procedures for the settlement of disputes and of the average number of cases examined each year concerning sickness and accidents relating to seafarers.**

*Part V of the report form. Practical application.* **The Committee would be grateful if the Government would continue to supply all available general information in its next reports and, where available, statistics on the number of serving seafarers on board Panamanian vessels covered by the provisions of the Convention, the number of seafarers who have received assistance, the maximum amount of expenses per seafarer to be covered by shipowners, etc.**

### **Sickness Insurance (Sea) Convention, 1936 (No. 56) (ratification: 1971)**

The Committee notes the Government's report and the adoption of Organic Act No. 51 of 27 December 2005 concerning the Social Security Fund. It draws the Government's attention to the following points.

*Article 1 of the Convention. Compulsory sickness insurance.* For a number of years the Committee has been pointing out that, by excluding from the social security scheme foreign seafarers who are married to non-Panamanian women or who have children whose mothers are not Panamanian, resolution No. 1348-83 J.D. of 1983 is contrary to the provisions of *Article 1* of the Convention. The Government indicates that the draft amending this resolution, which was under examination, was adopted on 16 November 2005 by the Management Committee of the Board of the Social Security Fund. This body decided, however, with regard to the adoption of Organic Act No. 51 of 27 December 2005 and the new Maritime Labour Convention, 2006, which Panama wishes to ratify, to submit the adopted draft to the National Legal Advisory Department and the National Planning Department for evaluation. **The Committee asks the Government to keep it informed of the effective entry into force of the draft resolution adopted on 16 November 2005.**

Under the terms of section 77 of Organic Act No. 51, all workers employed in Panama, whether nationals or foreigners, are obliged to participate in the social security regime. Title III of Volume III of resolution No. 39489-2007-JD regulating affiliation and registration in the Social Security Fund, however, qualifies this principle. Under this Title, concerning special arrangements applicable to maritime workers, a distinction must be made between seafarers employed on board vessels assigned to domestic service (inshore navigation) and those employed on board vessels assigned to international service. Hence, under sections 87 and 88 of this resolution, seafarers employed on board vessels assigned to international service, unlike those employed on board vessels assigned to domestic service, are not obliged to belong to the Social Security Fund and, consequently, to the sickness insurance scheme, but can belong to this Fund under a voluntary social security scheme. However, the Committee recalls that *Article 1, paragraph 1*, of the Convention states as follows: "Every person employed as master or member of the crew or otherwise in the service of the ship, on board any vessel, other than a ship of war, registered in a territory for which this Convention is in force and engaged in maritime navigation or sea fishing, shall be insured under a compulsory sickness insurance scheme." Moreover, this principle is laid down by Standard A4.5.5, taken in conjunction with Regulations 4.1 and 4.2 of the Maritime Labour Convention, 2006, which Panama, according to the Government's report, wishes to ratify. **The Committee therefore requests the Government to take the necessary steps to guarantee that all seafarers employed on board vessels flying the**

***Panamanian flag which are engaged in maritime navigation are insured under a compulsory sickness insurance scheme and enjoy the benefits to which they are entitled pursuant to the provisions of the Convention.***

*Article 2, paragraph 4, and Article 3, paragraph 3. Withholding of sickness benefit payments.* Section 126 of Organic Act No. 51 provides that the employer shall be responsible for cash sickness benefits not paid to insured persons by the Social Security Fund where non-payment is the result of the employer's failure to discharge his obligations. Hence, if the employer fails to make the contributions for which he is responsible, the Fund will not pay the cash sickness benefits to the insured persons. For many years the Committee has been drawing the Government's attention to the fact that insured persons must not be penalized by employers' failure to pay their contributions. It also recalls that medical care must be provided and sickness benefit paid to all persons covered by the Convention. The Convention only allows benefits to be withheld under specific conditions, and these do not include the non-payment of contributions by the employer. ***The Committee therefore requests the Government once again to take the necessary steps to amend the national legislation and to guarantee that, even in cases of non-payment of contributions by the employer, sickness benefits will be paid to insured persons by the Social Security Fund.***

## Peru

### ***Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1962)***

The Committee takes note of the information sent by the Government in response to earlier comments by the Trade Union of Fishing Boat Owners of Puerto Supe and Associates. It also notes with interest the adoption of Supreme Decree No. 003-2007-PRODUCE of 2 February 2007 and communication No. 0170-2007-MTPE/2/11.4 of 23 March 2007 asking for inspection of the fishing enterprises of Puerto Supe and those in the SUNAT database. ***The Committee requests the Government to provide information on the results of the inspections carried out pursuant to the communication of 23 March 2007 and on any penalties applied.***

According to Supreme Decree No. 003-2007-PRODUCE of 2 February 2007, in order to leave port, large industrial fishing vessels must now show a certificate attesting to payment of social security contributions ("*constancia de no adeudo*"), which must be delivered to the authority that issues permits for vessels to depart. The certificate is valid for 30 days and must be issued within three working days by the Social Benefits and Social Security Fund for Fishers to all shipowners requesting it.

The Committee notes that, according to Supreme Decree No. 009-97-SA issuing the enabling regulations of Act No. 26790 to modernize the health aspect of social security, fishing is considered as an activity liable to risk and must therefore be insured under the supplementary insurance for hazardous occupational activities (SCTR). The provisions of the Supreme Decree of 2 February 2007 do not, therefore, suffice on their own. ***The Committee nonetheless hopes that, in practice, the Decree will be an incentive to all shipowners to fulfil their obligations under the Convention and the national legislation. It requests the Government to keep it informed of any progress made in this area.***

The Committee also draws the Government's attention to other points raised in its 2006 observation for which a report is expected in 2008.

*The Committee would be grateful if in its next report the Government would explain why the workers of some enterprises are still denied protection under the law notwithstanding section 82 of Supreme Decree No. 009-97-SA, which provides that all workers engaged in high-risk activities must have the SCTR supplementary insurance. In the event of failure to take out SCTR supplementary insurance, the Committee points out that the Government has the primary responsibility for ensuring that the protection established by the Convention is properly implemented and that it is fully respected in practice. It also requests the Government to indicate the manner in which effect is given in practice to section 88 of these regulations, under which insurance institutions are required to bear the cost of sickness or injury where employers fail to pay insurance contributions, and may subsequently claim back from the employers the amounts they have paid out. Lastly, it requests the Government to provide information on the penalties incurred by employers for failure to meet their obligations under the SCTR supplementary insurance, and on the measures envisaged to secure observance by all maritime fishing companies of their obligations under the law.*

*With regard to cash benefits due to seafarers in the event of sickness or disease, the Committee would be grateful if the Government would indicate how effect is given to the Convention in the event of non-payment by shipowners of insurance contributions. It points out that under Article 4, paragraph 3, and Article 5, paragraph 3, of the Convention, where sickness or injury results in incapacity for work the shipowner does not cease to be liable until the sick or injured person becomes entitled to benefits under the compulsory insurance scheme.*

*Lastly, the Committee requests the Government to provide information in its next report on the outcome of the legal proceedings against the company Atlantida for non-payment of social insurance contributions in respect of invalidity and death. It hopes in particular that the Government will be in a position to report on how these matters have been settled and that it will provide all the relevant court decisions and any relevant information on: (i) the penalties imposed on the abovementioned enterprise; (ii) the benefits received by the workers of the enterprise from the insurance institutions; and (iii) the latters' exercise of their right to bring proceedings against the abovementioned enterprise.*

[The Government is asked to reply in detail to the present comments in 2008.]

### **Sickness Insurance (Sea) Convention, 1936 (No. 56) (ratification: 1962)**

The Committee takes note of the information sent by the Government in reply to earlier observations from the Trade Union of Fishing Boat Owners of Puerto Supe and Associates. It notes, however, that the Government has still not stated whether it is ready to convene a round table to address social security problems in maritime fishing.

The Committee notes with interest the adoption of Supreme Decree No. 003-2007-PRODUCE of 2 February 2007 and communication No. 0170-2007-MTPE/2/11.4 of 23 March 2007 requesting inspections of Puerto Supe fishing enterprises and of those appearing in the SUNAT database. **The Committee requests the Government to provide information on the outcome of inspections conducted pursuant to the communication of 23 March 2007, and on any penalties imposed.**

Furthermore, it draws the Government's attention to the points raised in its observation of 2006 for which a report is expected in 2008.

*Article 4(1) of the Convention. Payment to the seafarer's family of the whole or part of the cash benefit to which he or she would have been entitled had he or she not been abroad.* In its previous comments, the Committee noted the information supplied by the Government regarding the possibility for a person who is abroad to be represented in order to authorize a third person to act on his or her behalf in Peru, in particular with the social security institutions. The Committee nevertheless considered that this procedure was not of a nature to give full effect to *Article 4* of the Convention in that the Article requires the payment, as of right, that is, unconditionally, to the insured person's family of the whole or part of the sickness benefit when the insured person is abroad and has lost the right to wages. In its latest report, the Government refers once again to the procedure for representation set out in the Civil Code without indicating whether measures have been taken or are envisaged to give effect to this provision of the Convention. **The Committee therefore reiterates its request to the Government to re-examine the question and hopes that it will be in a position to inform the Committee in its next report of measures taken in this respect. Please also provide the information requested previously in regard to the benefits paid in practice to the families of insured persons who are abroad and have lost their right to wages.**

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

[The Government is asked to reply in detail to the present comments in 2008.]

## **Spain**

### **Food and Catering (Ships' Crews) Convention, 1946 (No. 68) (ratification: 1971)**

*Article 10 of the Convention.* The Committee notes with interest the information concerning the preparation of the annual report of the competent authority.

## **United Republic of Tanzania**

### **Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1983)**

The Committee notes the information provided by the Government in its report and asks the Government to provide additional information on the following points.

*Part I of the report form. Legislation and regulations applying the provisions of the Convention.* The Committee notes that the Occupational Health and Safety (OHS) Act, 2003, came into force on 1 August 2003. **The Committee asks the Government to indicate in its next report whether this Act is applied in both mainland Tanzania and Zanzibar.** The Committee understands that in Zanzibar the provisions of the Convention would also be applied by the Maritime Transport Act, 2005. In its report, the Government states that the Maritime Transport Act was a first bill that was expected to be discussed by the stakeholders and to come into force in 2006. **The Committee therefore requests the Government to indicate whether this Act has come into force and, if not, when it is expected to come into force.**

#### **Mainland Tanzania**

*Article 2, paragraph 4, of the Convention. Mandatory investigation into the causes of occupational accidents.* The Government provides no indication in its report on any measures adopted or envisaged to give effect to this provision of the Convention. The Committee therefore reiterates its previous comment. Under section 7 of the OHS Act, 2003, an inspector may investigate the circumstances of any accident which has occurred at or originated from a factory or workplace, or in connection with the use of machinery, and which has resulted in the injury, illness or death of any person. According to the OHS Act, these investigations appear to be optional. The Convention, however, provides for mandatory investigations into the causes and circumstances of occupational accidents resulting in loss of life or serious personal injury. **The Committee therefore requests the Government to take the necessary measures to give effect to this provision of the Convention.**

*Article 3. Research into particular hazards.* The Government states in its report that no particular hazards of maritime employment have been registered with the Occupational Safety and Health Authority (OSHA). Section 34(3) and (4) of the OHS Act, 2003, provides that the Chief Inspector shall undertake or promote studies and research to identify

hazards in the working environment and develop innovative ways of dealing with occupational safety and health problems, and that the results of such studies and research shall be made public and be used to promote occupational safety and health. **The Committee asks the Government to supply information in its next report on the research undertaken in this regard.**

*Article 4, paragraphs 2 and 3. Provisions on the prevention of occupational accidents.* Section 109 of the OHS Act, 2003, empowers the Minister to make regulations in the interest of the health and safety of persons at work or in connection with the use of the plant or machinery. The Government states that so far no regulations have been adopted under the OHS Act. The Committee recalls that the Convention requires the adoption of provisions that refer to general provisions on the prevention of accidents and the protection of health in employment which may be applicable to the work of seafarers and that specify measures for the prevention of accidents which are peculiar to maritime employment, in areas such as structural features of the ship, dangerous cargo and ballast and personal protective equipment for seafarers. **The Committee requests the Government to take the necessary measures to give effect to this requirement of the Convention.**

*Article 6, paragraph 3. Information of inspection and enforcement authorities.* The Government states in its report that training activities are yet to be carried out within the OSHA with a view to ensuring that inspection and enforcement authorities are familiar with maritime employment and its practices. **In view of the highly dangerous nature of the maritime employment, the Committee requests the Government to take the necessary measures to ensure that such activities are carried out without delay.**

*Article 6, paragraph 4. Means of bringing to the attention of seafarers the provisions on the prevention of accidents.* In its report, the Government indicates that OSHA is yet to hold consultations with the interested parties on the manner in which it envisages bringing to the attention of seafarers copies or summaries of the provisions on the prevention of accidents. **The Committee requests the Government to keep it informed on all progress achieved in such consultations. Please also indicate decisions taken on the manner in which copies or summaries of the provisions on the prevention of accidents will be brought to the attention of seafarers.**

*Article 8, paragraph 1. Programmes for the prevention of occupational accidents.* The Government's report contains no clear indication as to whether specific programmes or components of general vocational programmes on the prevention of occupational accidents have been established. **The Committee therefore again requests the Government to take appropriate measures to ensure that programmes for the prevention of occupational accidents are established by the competent authority with the cooperation of shipowners' and seafarers' organizations.**

*Article 8, paragraph 3. Establishment of occupational and safety committees.* Under section 13 of the OHS Act, 2003, a committee composed of employees' health and safety representatives will be established in each factory or workplace and will be consulted for the purposes of initiating, developing, promoting, maintaining and reviewing measures to ensure the health and safety of the employees at work. **As the Government's report gives no further information on the issue, the Committee requests the Government to supply information on the measures envisaged in order to extend the practice of the establishment of similar committees, as bodies for accident prevention, to workplaces where seafarers are employed.**

*Article 9. Instruction in professional duties.* The Government provides no information in its report in response to the Committee's previous observation under this Article. **The Committee therefore repeats its comment, requesting the Government to indicate the manner in which the general provisions contained in section 34(1) of the OHS Act, 2003, will be supplemented by a specific provision providing for the instruction in the prevention of accidents and in measures for the protection of health in employment to be included in the curricula for all categories and grades of seafarers (Article 9, paragraph 1), including measures to bring to the attention of seafarers information concerning particular hazards (Article 9, paragraph 2).**

## Zanzibar

Part XXIV of the Maritime Transport Act, 2005, contains provisions on inquiries and investigations into maritime casualties. Subject to its comments under Part I of the report form, the Committee asks the Government to provide further information on the following points.

*Article 2, paragraph 4. Mandatory investigation into the causes of occupational accidents.* Article 454 of the Maritime Transport Act, 2005, provides that when a loss of life or serious injury caused by fire or by any accident on board a Zanzibar ship occurs, the Registrar may cause a preliminary inquiry to be held and the Ministry may cause a formal investigation to be held as well. According to the Maritime Transport Act, these investigations appear to be optional. Article 458 provides for mandatory investigation only when a case of death occurred. The Convention provides for mandatory investigations into the causes and circumstances of occupational accidents resulting in both loss of life and serious personal injury. **The Committee therefore requests the Government to take measures to give effect to this provision of the Convention, also in cases of serious injury.**

*Article 3. Research into particular hazards.* The Government states in its report that no research has been made into particular hazards of maritime employment. **The Committee asks the Government to take the necessary measures to ensure that researches are undertaken to identify such hazards.**

*Article 4, paragraphs 2 and 3. Provisions on the prevention of occupational accidents.* The Government states that the Minister is expected to make regulations pertaining to each section of the Maritime Transport Act, 2005. **The Committee hopes that regulations concerning the prevention of occupational accidents will be adopted soon and that they will contain specific provisions, as required in Article 4, paragraphs 2 and 3, of the Convention.**

*Article 6, paragraph 3. Information to inspection and enforcement authorities.* According to the Government's report, no training activities seem to have been carried out yet with a view to ensuring that inspection and enforcement authorities are familiar with maritime employment and its practices. **The Committee asks the Government to take the necessary measures to ensure that such activities are carried out without delay.**

*Article 6, paragraph 4. Means of bringing to the attention of seafarers the provisions on the prevention of accidents.* The Government's report contains no clear indication on the manner in which it envisages bringing to the attention of seafarers copies or summaries of the provisions on the prevention of accidents to seafarers. **The Committee therefore requests the Government to give such indication in its next report.**

*Article 8, paragraph 1. Programmes for the prevention of occupational accidents.* The Government states in its report that it is planning to take preventive measures against occupational accidents, but that it was waiting for initiatives from the relevant organizations. In this respect, the Committee wishes to point out that, under the Convention, it is for the competent authority to make the necessary steps to establish programmes for the prevention of occupational accidents. **The Committee therefore requests the Government to contact the relevant organizations, as the case may be, and to take appropriate measures to ensure that programmes for the prevention of occupational accidents are established by the competent authority with the cooperation of shipowners' and seafarers' organizations.**

*Article 8, paragraph 3. Establishment of occupational safety and health committees.* The Government states in its report that in Zanzibar the port inspections are sufficient to ensure the prevention of accidents, and that there is no need for occupational safety and health committees. While harbour masters and port controllers may certainly detect a number of occupational safety and health risks on board ships, *Article 8, paragraph 1*, requires shipowners' and workers' organizations to cooperate in the establishment of programmes for the prevention of occupational accidents. According to *Article 8, paragraph 3*, in particular, national or local joint accident prevention committees or ad hoc working parties, on which both shipowners' and seafarers' organizations are represented, shall be established for this purpose. **The Committee therefore asks the Government to take the necessary measures to ensure the establishment of occupational safety and health committees as provided in Article 8, paragraph 3, of the Convention.**

*Article 9. Instruction in professional duties.* The Government states in its report that the Maritime Transport Act does not mention criteria for the recruitment of seafarers. **The Committee sees itself obliged to repeat its previous comment, requesting the Government to supplement the general provisions contained in section 34 of the OHS Act, 2003, by a specific provision providing for the instruction in the prevention of accidents and in measures for the protection of health in employment to be included in the curricula for all categories and grades of seafarers (Article 9, paragraph 1), including measures to bring to the attention of seafarers information concerning particular hazards (Article 9, paragraph 2).**

## United Kingdom

### **Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 1980)**

The Committee notes the observations submitted in 2005 by the Trades Union Congress (TUC) in relation to the first report communicated by the Government of the United Kingdom on the application of the Protocol to this Convention.

In its observations, the TUC expressed concerns about the United Kingdom's application of ratified ILO Conventions to United Kingdom ships. It asserted that the only body of primary legislation that applies to all UK merchant ships and all seafarers serving thereon is the Merchant Shipping Act 1995, which contained little in the way of social or employment protection, particularly for non-resident seafarers. The TUC further claimed that the United Kingdom did not regulate the social conditions including working conditions of seafarers on UK ships trading wholly or mainly outside of UK territorial waters, nor of those seafarers not resident in the United Kingdom, despite the fact that Convention No. 147 (and its Protocol) and the United Nations Convention on the Law of the Sea require that this be done for *all* seafarers on ships registered in the United Kingdom, without providing for exemptions based on residence or geographic location of the vessel. The TUC also maintained that the Convention and its Protocol placed an obligation on the Government to encourage collective bargaining (which it was, in any case, bound to do by virtue of ratification of Convention No. 98), in particular, where the flag State is unable to exercise effective control over ships flying its flag, because it did not extend its legislation to cover seafarers working wholly or mainly outside the United Kingdom or non-residents.

These observations have been transmitted to the Government for any comments it wished to make. In the absence of a reply, the Committee recalls that the Convention indeed applies to all persons employed on board ships registered in the member State's territory and falling within the scope of Convention No. 147 as defined in *Article 1*, regardless of their area of operation. The exclusion, in law or in practice, of persons employed on board ship who are not resident in the

country of the ship's registration would normally not be compatible with the good faith application of Convention No. 147 in a country with an open register (including one with an off-shore or international register), where a large proportion of seafarers would actually not be covered (see, for the specific case of social security, paragraph 50 of the Committee's General Survey of 1990 on labour standards on merchant ships). ***The Committee asks the Government to provide, having particular regard to the practical application of Article 2, paragraphs (a) and (b), of the Convention, information on the assertions made by the TUC concerning social and employment protection afforded to, and social conditions including working conditions in place for, seafarers on UK ships trading wholly or mainly outside of UK territorial waters or seafarers not resident in the United Kingdom.***

As a general comment, the TUC advocated the ratification of the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), and the Repatriation of Seafarers Convention (Revised), 1987 (No. 166). ***The Committee would appreciate information on the Government's present position with regard to the recommendation of the TUC.***

[The Government is asked to reply in detail to the present comments in 2008.]

### **Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) (ratification: 2001)**

Further to its previous direct request, the Committee notes the observations submitted in 2005 by the Trades Union Congress (TUC) in relation to the first report communicated by the Government of the United Kingdom on the application of the Convention. These observations have been transmitted to the Government for any comments it wished to make. In the absence of a reply, the Committee draws the Government's attention to the following points.

*Article 1, paragraphs 2 and 3, of the Convention. Commercial maritime fishing.* Whilst recognizing that the United Kingdom has implemented EC Directive 2000/34, the TUC noted that this Convention has not been applied to commercial maritime fishing. The TUC considered that the consultations held on the implementation of EC Directive 2000/34 with national fishing federations were not sufficient, since they only represented skippers or fishing vessel owners. In its view, it was not sustainable to argue that the Convention needs not be applied to commercial maritime fishing because there is an EC Directive making provisions for those employed in the fishing industry.

The Committee points out that, according to the Convention, the competent authority shall apply the provisions of this Convention to commercial maritime fishing to the extent it deems practicable, after consulting the representative organizations of fishing vessel owners and fishers. ***The Committee requests the Government to indicate: (i) whether consultations on the subject have been held with the representative organizations of both fishing vessel owners and fishers; and (ii) if so, whether the application of the provisions of the Convention to commercial maritime fishing was deemed impracticable.***

*Article 2, subparagraph (d). Definition of "seafarer".* The TUC indicated that persons undergoing training on a sail training vessel and persons who have no emergency safety responsibilities on a sail training vessel are not defined as seafarers and are thus exempt from the Merchant Shipping (Hours of Work) Regulations 2002. The TUC found the exclusion of such persons unacceptable.

The Committee recalls that the Convention applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member for which the Convention is in force and is ordinarily engaged in commercial maritime operations (*Article 1, paragraph 1*). In the event of doubt as to whether or not any ships are to be regarded as engaged in commercial maritime operations for the purpose of the Convention, the question shall be determined by the competent authority after consulting the organizations of shipowners and seafarers concerned (*Article 1, paragraph 3*). ***The Committee asks the Government to indicate, whether or not it considers sail training vessels as ordinarily engaged in commercial maritime operations, and whether the organizations of shipowners and seafarers concerned have been consulted before such determination has been made.***

*Article 2, subparagraph (e). Definition of "shipowner".* The TUC referred to the rationale for not defining the term "shipowner" in the Hours of Work Regulations and instead making specific reference to the "employer", namely that the shipowner may not necessarily have direct responsibility for the employment of some or all of the seafarers engaged on a ship and may therefore not be in a position to control their hours of work or rest. The TUC pointed out that provision for this concern is made in the Convention, in that reference is made both to "the owner of the ship" and "any other organization or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner". The TUC cautioned that the absence of reference to the term "shipowner" has the potential to remove responsibility from the owner of the ship.

The Committee notes that, while the term "shipowner" is not used in the Hours of Work Regulations, its section 2 defines, in addition to the word "employer", the term "company" in the manner provided for under *Article 2, subparagraph (e)*. According to section 4 of the Regulations, it shall be the duty of a *company*, an employer of a seafarer and a ship master to ensure that a seafarer is provided with at least the minimum hours of rest.

*Article 4. Normal working hours' standard for seafarers.* The TUC contested the assertion of the Government that it was not required to apply *Article 4* through national legislation. This Article was particularly important because seafarers should have no less rights than other workers, in that their normal working hours should be based on an eight-

hour day with one day of rest per week and rest on public holidays (i.e. 48 hours per week). The TUC further noted that *Article 4* may also have implications for the enforcement of the statutory minimum paid annual leave regulation.

The Committee points out that, according to this Article 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. ***While the Committee considers that this Article does not necessarily call for legislative measures laying down the normal working hours of seafarers, it requests the Government to indicate by what means it is ensured that the admissible minimum of ten hours of rest per day and 77 hours of rest per week retains an exceptional character.***

*Article 5, paragraphs 1 and 2. Minimum hours of rest.* Considering that the phrases “in any 24-hour period” and “in any 7-day period” used in the Convention were key to the proper enforcement of the rest period regulations, the TUC criticized that the Government had not yet provided any operational guidance to shipowners or trade unions as to the proper interpretation of these regulations, which was compromising their application and enforcement. ***The Committee asks the Government to indicate supporting measures taken or envisaged to ensure a proper understanding of the relevant regulations and facilitate the application of the fixed limits on hours of rest in practice.***

*Article 5, paragraph 5. Safeguard.* The TUC found that, in the absence of a collective agreement or arbitration award, no provision was made by the competent authority to determine such provisions to ensure the seafarers concerned have sufficient rest. The TUC disagreed with the Government's statement that provisions of this paragraph are covered by section 5 of the Hours of Work Regulations of 2002. According to section 5(3) of the Regulations, the prescribed musters, firefighting and lifeboat drills shall be conducted in a manner which minimizes the disturbance of rest periods and does not induce fatigue. Section 5(4) provides that a seafarer who is on call on board ship shall have an adequate compensatory rest period if his normal period of rest is disturbed by call-outs to work.

The Committee notes that these provisions essentially repeat *paragraphs 3 and 4 of Article 5*, already binding through ratification. Section 5(3) and (4) of the Hours of Work Regulations essentially constitutes framework legislation for further concrete measures to be taken, as required by *Article 5, paragraph 5*, which calls for further implementing measures through either collective agreements or arbitration awards, or in their absence, through government determination. For example, while *Article 5, paragraph 4*, does not require compensatory rest periods of identical length for time spent on call-outs, guidance as to “adequate compensatory rest” is necessary. ***The Committee, therefore, asks the Government to specify concrete measures taken to ensure that the prescribed musters, firefighting and lifeboat drills shall be conducted in a manner which minimizes the disturbance of rest periods and does not induce fatigue (Article 5, paragraph 3), and that seafarers required to work during their normal period of rest are given an adequate compensatory rest period (Article 5, paragraph 4).***

*Article 5, paragraph 6. Exceptions to the limits on hours of rest.* The TUC indicated that the Government had introduced the concept of “workforce agreements”, whereas the Convention only allowed for exceptions to the limits on hours of rest by means of collective agreements. The TUC requested clarification from the Government as to whether workforce agreements can only be put in place where there already are collective agreements.

According to section 6 of the Hours of Work Regulations, the Maritime and Coastguard Agency (MCA) may authorize a collective agreement or workforce agreement permitting exceptions to the limits in section 5(1) and (2). The term “workforce agreement” is qualified in schedule 1 as an agreement that is to be signed between the employer and the duly elected representatives of the workforce, and that applies to all of the “relevant members of the workforce”, i.e. employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement. It appears, therefore, that workforce agreements are not negotiated between employers or employers' organizations and workers' organizations, and are not collective agreements. The Committee points out that, according to *Article 5, paragraph 6*, the only instruments that may permit exceptions to the limits set out in *paragraphs 1 and 2* of this Article of the Convention, are collective agreements authorized or registered in accordance with this provision of the Convention. ***The Committee requests the Government to take the necessary measures to ensure that there are no exceptions to the determined minimum hours of rest other than those permitted by duly authorized collective agreements.***

*Article 13. Responsibility of the shipowner.* The TUC felt that sections 4, 7 and 9 of the Hours of Work Regulations and section 5 of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997 failed to address the explicit obligation placed upon the shipowner in this provision of the Convention, which could lead to the shipowner escaping all responsibility with respect to manning.

According to section 5(1) of the Safe Manning, Hours of Work and Watchkeeping Regulations, it is the duty of the company to ensure that in relation to every ship of 500 gt or more a safe manning document is in force, and that the manning of the ship is maintained at all times to at least the levels specified in the document. Section 4 of the Hours of Work Regulations provides that it is the duty of a company, an employer of a seafarer and a ship master to ensure that a seafarer is provided with at least the minimum hours of rest. *Article 13* requires the shipowner to ensure that the master is provided with the necessary resources for the purpose of compliance with obligations under this Convention. ***The Committee asks the Government to indicate by what means it is ensured that the shipowner, as defined in Article 2,***

*subparagraph (e), has the basic responsibility to enable the master, in terms of resources, to implement the requirements of the Convention concerning hours of rest and manning.*

*Article 15, subparagraph (b), and Part V of the report form. Inspection.* The TUC found that the current inspection and enforcement regime was inadequate and that the flag State and port State control inspections were not appropriate to satisfy the requirements of the Convention. It found the Government's indication, that details were not yet available on the specific number and nature of infringements under the Regulations, unacceptable. ***Further to its previous comments under Article 9, the Committee requests the Government to give a general appreciation of the manner in which the Convention is implemented and enforced in the United Kingdom. Please supply information on the practical application of the Convention, in particular relevant extracts from inspection reports and the number and nature of infringements reported.***

*Article 15, subparagraph (c). Complaints procedures.* The TUC stated that, while consultations had been held as regards the draft implementing Regulations, consultations with respect to the procedures to investigate complaints relating to any matter contained in the Convention were inadequate. ***Further to its previous comments under this provision of the Convention, the Committee asks the Government to indicate the consultations held on the matter, in conformity with this provision of the Convention.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Anguilla

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

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

For a number of years the Government has failed to reply to the Committee's comments concerning the application to Anguilla of section 37 of the 1979 United Kingdom Merchant Shipping Act, which amended section 15 of the 1970 United Kingdom Merchant Shipping Act, removing the possibility to deprive seamen of the right to unemployment indemnity where they have failed to exert reasonable efforts to save the ship, persons and cargo.

***The Committee therefore hopes that the Government will indicate in its next report whether measures have been taken to extend the above section 37 of the 1979 Merchant Shipping Act to Anguilla, so as to guarantee to seamen payment of unemployment indemnity for a period of at least two months in the event of loss or foundering of the vessel and, if so, to communicate the relevant text.***

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

## Isle of Man

### ***Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)***

Further to its previous comment, the Committee notes the observations submitted in 2005 by the Trades Union Congress (TUC) in relation to the report communicated by the Government of the United Kingdom on the application of the Convention.

In its observations, the TUC raised general concerns about the application of this Convention to Isle of Man ships. The TUC claimed that the Isle of Man, despite the requirements of the Convention (*Articles 1 and 2*) and of the United Nations Convention on the Law of the Sea, did not afford employment rights protection to non-resident seafarers and did not regulate the social conditions including working conditions of *all* seafarers on ships registered in the Isle of Man. The union further maintained that the Convention placed an obligation on ratifying States to encourage collective bargaining where a flag State is unable to exercise effective control over ships flying its flag (such as on the Isle of Man register); and that this obligation became relevant where the flag State did not extend its legislation to cover non-resident seafarers.

These observations have been transmitted to the Government for any comments it wished to make. In the absence of a reply, the Committee recalls that this Convention indeed applies to all persons employed on board ships registered in the member State's territory and falling within the scope of the Convention as defined in *Article 1*. The exclusion of persons employed on board ship who are not resident in the country of the ship's registration would normally not be compatible with the good faith application of the Convention in a country with an open register, where a large proportion of seafarers would actually not be covered (see, for the specific case of social security, paragraph 50 of the Committee's General Survey of 1990 on labour standards on merchant ships).

***The Committee asks the Government to provide full information on the assertions made by the TUC concerning employment rights protection afforded to, and working conditions in place for, non-resident seafarers on ships registered in the Isle of Man. In addition, with reference to its previous comment, the Committee wishes to renew its request for detailed information as to how the Government discharges its obligation to exercise effective jurisdiction over ships registered in the Isle of Man, as required by Article 2, subparagraph (b), of the Convention.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Montserrat

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

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

According to the Government's indications, the provisions of section 37 of the 1979 United Kingdom Merchant Shipping Act, which amends section 15 of the 1970 United Kingdom Merchant Shipping Act, removing the possibility to deprive seamen of the right to unemployment indemnity where they have failed to exert reasonable efforts to save the ship, persons, and cargo, have not been extended to Montserrat. *The Committee hopes that the Government will be able 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 Merchant Shipping Act cited above, so as to ensure to seamen the payment of an unemployment indemnity for a period of at least two months without restriction, in case of loss or foundering of the vessel, in conformity with 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** (Saint Lucia); **Convention No. 8** (Grenada, Netherlands: Aruba, Netherlands Antilles, Nigeria, Norway, Saint Lucia); **Convention No. 9** (Djibouti); **Convention No. 16** (Djibouti, Dominica); **Convention No. 22** (China: Macau Special Administrative Region, Ghana, Iraq, Malta, Seychelles, United Kingdom: Anguilla); **Convention No. 23** (Belize, China: Macau Special Administrative Region, Ghana, Iraq, United Kingdom: Anguilla); **Convention No. 53** (Liberia, Malta); **Convention No. 55** (United States, United States: American Samoa, Guam, Puerto Rico, United States Virgin Islands); **Convention No. 56** (Peru); **Convention No. 68** (Egypt, Turkey); **Convention No. 69** (Ghana, Turkey); **Convention No. 73** (Turkey); **Convention No. 74** (Ghana); **Convention No. 91** (Slovenia); **Convention No. 92** (China: Hong Kong Special Administrative Region, Denmark, Ghana, Republic of Moldova, Turkey); **Convention No. 108** (India, Iraq, Saint Lucia, Saint Vincent and the Grenadines, Slovenia, Ukraine, United Kingdom: St. Helena); **Convention No. 133** (China: Hong Kong Special Administrative Region, Denmark, Luxembourg, Republic of Moldova, Turkey, United Kingdom: Isle of Man); **Convention No. 134** (Romania); **Convention No. 145** (Morocco); **Convention No. 147** (Bahamas, Barbados, Iraq, Lebanon, Liberia, Peru, Ukraine, United States, United States: American Samoa, Guam, Northern Mariana Islands, Puerto Rico, United States Virgin Islands); **Convention No. 163** (Bulgaria, France, Mexico); **Convention No. 164** (France); **Convention No. 165** (Philippines); **Convention No. 166** (Egypt, France); **Convention No. 178** (Albania, France, Ireland, Luxembourg, United Kingdom: Isle of Man); **Convention No. 179** (France, Ireland, Morocco, Philippines); **Convention No. 180** (Belgium, Denmark, Greece, Luxembourg, Malta, Netherlands, Slovenia, United Kingdom: Isle of Man).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 22** (Bahamas); **Convention No. 68** (Spain); **Convention No. 73** (Malta).

## Fishers

### Brazil

#### **Fishermen's Competency Certificates Convention, 1966 (No. 125)** (ratification: 1970)

The Committee notes that the Government refers in its report to the legal provisions under which fishing vessels of over 100 gross registered tons are required to carry a certificated engineer. However, the Committee draws the Government's attention to the fact that the comments that it has been making for many years on the application of *Article 5 of the Convention* concern the requirement to carry a certificated mate, and not an engineer, on board fishing vessels of over 100 gross registered tons. ***The Committee hopes that the Government will adopt the necessary measures without further delay to bring its legislation into line with the requirements of this provision of the Convention.***

Moreover, as regards minimum age, the Committee notes that, under the terms of section 0102 of Chapter 1 of NORMAM-13 of 2000 respecting the admission, registration, training and vocational qualification of seafarers, the minimum age required to be a sea fisher is 18 years. It also notes, from a reading of the document of the Department of Ports and Coasts of the Maritime Authority on the vocational training of fishers, that the certificate for the skipper of a fishing vessel engaged in inland navigation requires four years' experience on board and that the certificate for a skipper of a fishing vessel engaged on the high seas requires two additional years of vocational experience. The Committee therefore understands that the minimum age to obtain these certificates is 22 and 24 years, respectively. The Committee however notes that the above document does not establish requirements relating to professional experience for the issue of certificates for mates and engineers, and that it is not therefore possible to calculate on this basis a minimum age to obtain these certificates. The Committee notes the Government's indications that the rules applicable in this respect are set out in the general certification plan, contained in Schedule 2-A of NORMAM-13, which the Government has not however attached to its report. ***The Committee requests the Government to provide a copy of the relevant provisions of NORMAM-13 so that it can ascertain whether the provisions of Article 6, paragraph 1, of the Convention respecting the minimum age required to obtain the various types of certificates are complied with by the national legislation.***

Finally, the Committee notes the information provided by the Government in reply to its previous comment concerning the experience prescribed for the issue of an engineer's certificate of competency. The Committee notes the information provided by the Government in reply to its previous comment, and particularly the document of the Department of Ports and Coasts of the Maritime Authority on the vocational training of fishers. It notes in this respect that the above document envisages a minimum of two years' professional experience on board a vessel for the issue of an engineer's certificate (*marinheiro de máquinas*). It recalls that under *Article 9, paragraph 1*, of the Convention the minimum professional experience prescribed by national laws or regulations for the issue of an engineer's certificate of competency must be three years in the engine room. The Committee notes the Government's indication in its report that it will refer the matter to the Department of Ports and Coasts so that it can take the appropriate measures in this respect. ***The Committee hopes that the Government will rapidly bring its legislation into conformity with the Convention on this matter and requests it to keep the Committee informed of any development in this respect.***

### Liberia

#### **Minimum Age (Fishermen) Convention, 1959 (No. 112) (ratification: 1960)**

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

Further to its previous comments, the Committee notes that under section 291 of the Liberian Maritime Law – Title II of the Liberian Code of Laws – a vessel means any vessel registered under Title II and a fishing vessel means a vessel used for catching fish, whales, seals, walrus and other living creatures at sea. Under section 326(1) of the Maritime Law the minimum age for admission to employment or work on Liberian vessels is 15 years.

The Committee notes that vessels eligible to be documented include, by virtue of section 51 of the Maritime Law, inter alia, vessels of 20 net tons and over engaged in coastwise trade between ports of Liberia or between those of Liberia and other West African nations; and seagoing vessels of more than 1,600 tons engaged in foreign trade. The Committee recalls in this connection that the Convention applies to fishing vessels which under the terms of *Article 1 of the Convention* include all ships and boats, of any nature whatsoever, whether publicly or privately owned which are engaged in maritime fishing in salt waters. ***The Committee hopes that the Government will provide information on measures taken or envisaged to apply the Convention to all fishing vessels coming under the purview of Article 1 of the Convention.***

***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, including Convention No. 112. ***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.*

### **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:

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 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, paragraph 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, paragraph 2.*

*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, including Convention No. 113. *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.*

### **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:

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 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, 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.*

## **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:

The Committee has been commenting for a number of years on the absence of laws and regulations giving effect to the Convention. In its last report, the Government states that progress is being made in this respect and that a national workshop on the formulation of fishing policies was organized. The Government also indicates that copies of the new legislation and the texts defining the new policies will be communicated to the ILO as soon as they are 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 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.*

## Trinidad and Tobago

### **Fishermen's Competency Certificates Convention, 1966 (No. 125)** (ratification: 1972)

The Committee notes with regret that despite its repeated comments, the Government has not taken any concrete steps for the adoption of laws or regulations giving effect to the specific requirements of Parts II (Certification), III (Examinations) and IV (Enforcement measures) of the Convention.

In its last report, the Government is limited to providing statistical data concerning the training courses offered by the Caribbean Fisheries Training and Development Institute in the period 2002–06 and other training activities conducted in collaboration with Japan's International Cooperation Agency, which bear little relevance with the scope and purpose of this Convention. The Government adds that at the regional level consideration is being given to the acceptance of the 1995 STCW-F Convention, and also that the Caribbean Fisheries Training and Development Institute has begun redesigning its fisheries training programme along the lines of the "FAO/ILO/IMO Document for Guidance on Training and Certification of Fishing Vessel Personnel", which again is strictly not connected with the implementation of the Convention in either law or practice.

***Recalling that in spite of the ratification of the Convention some 35 years ago, the Government has never taken action to ensure full compliance with its provisions, the Committee urges the Government to promptly consider the adoption of those legislative or other measures necessary for the effective application of the Convention.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 112** (*Australia, Australia: Norfolk Island, France: French Guiana, Guadeloupe, Martinique, Réunion*); **Convention No. 113** (*Bosnia and Herzegovina, Bulgaria, France, France: French Guiana, Guadeloupe, Martinique, Réunion, Guinea, Netherlands: Aruba, Poland, Russian Federation, Ukraine*); **Convention No. 114** (*Cyprus, France, France: French Guiana, Guadeloupe, Martinique, Réunion, Germany, Guinea, Italy, Netherlands: Aruba, Slovenia, United Kingdom, United Kingdom: Guernsey*); **Convention No. 125** (*France, France: French Guiana, French Polynesia, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon, Panama, Syrian Arab Republic*); **Convention No. 126** (*Bosnia and Herzegovina, Brazil, Denmark, Denmark: Greenland, France, France: French Guiana, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon, Netherlands, Netherlands: Aruba, Panama, Sierra Leone, Slovenia, Ukraine, United Kingdom: Isle of Man*).

## Dockworkers

### General observation

#### **Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)**

1. In a general observation in 1987 on the application of the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27), the Committee addressed the question of the application of this Convention in relation to modern methods of cargo handling with particular reference to containers. The Committee noted that the reference in *Article 1, paragraph 1, of the Convention*, to “any package or object of one thousand kilograms or more” was worded in such general terms as to cover containers, to which the obligation to mark the gross weight plainly and durably on the outside before their being loaded on ship or vessel should therefore apply. It also noted, however, that additional information was needed on the actual practice and whether member States were encountering any difficulties in this regard.

2. Based on an analysis of the information received, the Committee concluded in another general observation on the application of the Convention in 1991 that it was “desirable that this Convention be revised with a view to ensuring the safe handling of containers”. The Committee notes that this instrument was subsequently examined by the Governing Body at its 271st Session and, based on a recommendation of the Working Party on Policy regarding Revision of Standards of the Committee on Legal Issues and International Labour Standards, it decided that the instrument should be revised (see GB.271/11/2, paragraph 15, and GB.271/LILS/5(Rev.1), paragraph 40). Although the decision made by the Governing Body to revise this Convention still remains, the proposal for a general discussion by the Conference based on an integrated approach to work in ports, which had been submitted on several occasions, has been withdrawn (see paragraphs 78–80 of GB.300/2/2: *Agenda of the International Labour Conference, (b) Proposals for the agenda of the 99th Session (2010) of the Conference*).

3. The Committee considers that in the present situation a renewed detailed examination of the application of this Convention in relation to modern means of cargo handling, with particular reference to containers, is warranted. Based on an examination of the information received since 1987, and of the reports received this year, the Committee concludes that it does not have at its disposal sufficiently detailed and up to date information to be able to carry out such an analysis. ***In these circumstances the Committee invites Governments that have not already done so in this year’s report to submit detailed and up to date information to the Committee with its new report on the manner in which the Convention is applied in relation to modern methods of cargo handling, with particular reference to containers, and to indicate any difficulties encountered in this regard.***

### Algeria

#### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1962)**

1. The Committee notes the information in the Government’s report and the replies to its comments. It also takes note of “documents 1 and 2” issued by the Ministry of Transport and appended to the Inter-Ministerial Order of 5 November 1989 which set forth supervisory procedures pursuant to section 2 of the Order.

2. *Articles 12, 13 and 15 of the Convention. Application of the Convention.* With reference to its previous comments, the Committee notes the Government’s information that Act No. 88-07 of 26 January 1988 does not refer to special regulations on accident prevention for dockers. The Government further indicates that there are no general occupational safety and health regulations applying to all workers whatever their branch or sector of activity. The Committee would point out that the general regulations referred to by the Government establish a general framework for the prevention of occupational risks, but contain no specific provisions applying to dockers that ensure application of the Convention. In addition, section 45(2) of the abovementioned Act provides that special provisions for certain sectors of activity and certain work processes shall be established in regulations. Furthermore, the Government has indicated several times in previous reports that according to Act No. 88-07 a legislative text on ports and docks is indeed to be developed, but that this text is still under consideration in accordance with guidelines and time limits set by the Government”. ***Consequently, the Committee urges the Government to take the necessary steps in the very near future to give full effect to the provisions of the Convention.***

3. The Committee would remind the Government of the Governing Body’s invitation to 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 (document GB.268/LILS/5(Rev.1), paragraphs 99-101). Ratification of Convention No. 152 would ipso jure involve the denunciation of Convention No. 32. It 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, at the ILO web site: <http://www.ilo.org/public/english/protection/safework/cops/english/index.htm>. ***The Government is asked to keep the Committee informed of any progress in this area.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Angola

### **Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27) (ratification: 1976)**

1. The Committee notes with regret that, for several years, the Government's report has contained no response to comments made by the Committee and that relevant national legislation does not contain provisions giving effect to *Article 1, paragraph 1, of the Convention*. The Committee also notes the observation received from the National Trade Union of Angolan Workers (UNTA-CS). It appears these comments confirm that the Convention is not applied in the country. The Committee notes that the Government, on several occasions, has stated its intention of taking the necessary measures to give effect to this provision of the Convention but that, in recent reports, the Government no longer refers to this intention. ***The Committee is therefore bound to reiterate its firm hope that the Government will make every effort to ensure that effect is given to this Convention in law and practice. The Committee requests the Government urgently to report on any progress in this matter, including any reply it may deem relevant in relation to the observation by UNTA-CS.***

2. ***With regard to the question of possible difficulties encountered in the application of the Convention in relation to modern methods of cargo handling, with particular reference to containers, the Committee requests the Government to refer to the general observation that it is making on the Convention at the present session.***

[The Government is asked to reply in detail to the present comments in 2008.]

## Argentina

### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1950)**

1. The Committee notes the information contained in the Government's report. It also notes that the provisions of *Article 8 of the Convention*, Safety measures regarding hatch coverings and beams used for hatch coverings; *Article 13, paragraph 2*, Rescue measures in the event of workers falling into the water; *Article 14*, Prohibition against removing or interfering with fencing, gangways, gear, ladders, etc.; and *Article 18*, Reciprocal arrangements are still not covered by specific regulations as required by the Convention. ***The Committee hopes that the Government will adopt the necessary measures in the near future.***

2. The Committee takes this opportunity to remind the Government that the ILO Governing Body invited the parties to Convention No. 32 to consider the ratification of the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), which revises Convention No. 32 (Document GB.268/LILS/5(Rev.1), paragraphs 99–101). Such ratification would automatically entail the immediate denunciation of Convention No. 32. The Committee would also like to draw to the Government's attention the code of practice recently adopted by the ILO, entitled *Safety and health in ports* (Geneva, 2005). This code of practice is available on the ILO web site at the following address: <http://www.ilo.org/public/english/protection/safework/cops/english/index.htm>. ***The Government is asked to keep the Committee informed of all progress made in this area.***

## Brazil

### **Dock Work Convention, 1973 (No. 137) (ratification: 1994)**

*National policy to ensure permanent or regular employment for dockworkers.* The Committee notes the detailed information sent by the Government in a report received in October 2007 in reply to its observation of 2006, which expressed the concern of three dockworkers' unions of the port of Suape in the State of Pernambuco (FENCCOVIB, FNE and FNP) and also reflected the situation in the port of Vila Velha in the State of Espírito Santo. The Government indicates that the labour inspectorate, with the collaboration of the Labour Prosecutions Office, put pressure on the port operator to regularize the contractual situation of the workers concerned. In an agreement judicially approved at the request of the Labour Prosecutions Office, it was agreed that some 350 dockworkers who had been registered by the OGMO (manpower management agency) would remain under contract with the port operator. The Labour Prosecutions Office emphasized the priority entitlement which has to be granted to registered casual dockworkers (*trabalhadores portuários avulsos*) for obtaining permanent employment in enterprises, with fair conditions of work that have been previously agreed with the respective union of registered workers (Opinion No. DC-174611/2006-000-00.5 of 22 February 2007 issued by the Regional Labour Prosecutor and Deputy National Dock Work Coordinator of the Labour Prosecutions Office). The Government adds that the port operator was obliged to stop contracting workers who had not been registered but the supply of work in the port of Suape decreased, and this was the situation which gave rise to the complaints from the workers' organizations. According to the Government, an outcome was achieved which is practically in conformity with *Article 2, paragraph 1, of the Convention* since regular work was ensured for 350 dockworkers who

had previously been registered with the OGMO. Nevertheless, the Committee notes that, according to the Government's report, some port operators still hire non-registered workers and that the National Permanent Ports Commission, after several meetings, has not reached consensus on the hiring of dockworkers on a permanent basis. *The Committee thus welcomes the efforts of the Labour Inspection and the Labour Prosecutions Office and hopes that the Government will be able to inform in its next report on the outcomes of those actions and on any other significant progress made on the application of the Convention in all ports.*

## Canada

### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1946)**

1. The Committee notes the information provided by the Government in its report including references made to the amended Marine Occupational Safety and Health Regulations (SOR/87-183); the amended Canada Occupational Health and Safety Regulations (SOR/86-304) under the Canada Labour Code (RS, 1985, c. L-2); the Canada Shipping Act 2001 (2001, c. 26), and the amended Cargo, Fumigation and Tackle Regulations (SOR/2007-128). The Committee notes with satisfaction that, through this new legislation, compliance is ensured with the Convention.

2. The Committee notes further that the Government has referred to Part 3 of the amended Cargo, Fumigation and Tackle Regulations. The Government indicates that Part 3 of these regulations implement various provisions in the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152). The Committee takes note of these developments and takes the opportunity to recall that the Governing Body of the ILO has invited parties to Convention No. 32 to consider ratification of Convention No. 152, which revises Convention No. 32 (GB.268/LILS/5(Rev.1), paragraphs 99–101). Such ratification would automatically entail an immediate denunciation of Convention No. 32. The Committee also wishes to bring to the Government's attention an ILO code of practice in this area, *Safety and health in ports* (Geneva, 2005). This code of practice is available, inter alia, through the ILO's web site by following the link, <http://www.ilo.org/public/english/protection/safework/cops/english/index.htm>. *The Government is requested to keep the Committee informed of any developments in this respect.*

## Congo

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1986)**

1. The Committee notes with regret that the Government's report has not been received. Taking this occasion to bring to the Government's attention a newly adopted ILO code of practice in this area, *Safety and health in ports* (Geneva, 2005), available, inter alia, through the ILO's web site by following this link, <http://www.ilo.org/public/english/protection/safework/cops/english/index.htm>, the Committee hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

1. Further to its previous comments, 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.*

2. 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.*

3. The Committee asks the Government to provide additional information on the following points.

*Article 6 of the Convention.* 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 to 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.***

***4. 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.

2. *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 the technical assistance of the ILO to resolve any problems related to the application of this Convention.*

## Ecuador

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)** (ratification: 1988)

1. The Committee notes the information supplied in the Government's report. It notes with regret that, according to the Government, there has been no change regarding the revision of the *Handbook of Standards on Safety and Risk Prevention for Dockworkers*. It takes this opportunity to draw the Government's attention to the recently adopted ILO code of practice *Safety and health in ports* (Geneva, 2005), which is available inter alia at the ILO web site: <http://www.ilo.org/public/english/protection/safework/cops/english/index.htm>. *In view of the foregoing, the Committee requests the Government to take the necessary steps without delay to complete the revision of the Handbook of Standards on Safety and Risk Prevention for Dockworkers and to provide a copy as soon as it is adopted, together with any relevant texts.*

2. *Article 26 of the Convention. Testing, thorough examination, inspection and certification of lifting appliances and items of loose gear.* The Committee notes the Government's statement that it plans to update existing standards on safety and health in dock work, that the Committee's more specific comments have been forwarded to the Directorate-General of the merchant navy and that the Government is awaiting information. *It requests the Government to confirm whether this is the case and, if so, to report on all developments and to provide copies of any relevant texts as soon as they are adopted. The Committee trusts that the Government will take into account the numerous comments the Committee has been making since 1993. It reminds the Government that it may avail itself of ILO technical assistance in aligning its legislation with the Convention and ensuring its application in practice.*

3. *Part V of the report form. Application in practice.* *The Committee requests the Government to provide extracts from the reports of the inspection services, information on the number of workers covered by the legislation, the number and nature of the contraventions reported and any other information that would enable the Committee to assess how the Convention is applied in practice.*

[The Government is asked to reply in detail to the present comments in 2008.]

## Finland

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)** (ratification: 1981)

1. The Committee notes the information contained in the Government's report. It notes with interest the adoption of the Government Decree on "Work safety in connection with loading or unloading vessels" (633/2004) which gives further effect to the Convention, in particular through its section 26 which requires that the lifting devices, which form an integral part of the load, should be inspected before each use and section 28(2) which provides that lifting devices are to be inspected by a person authorized by the employer or the ship's master adequately familiar with the structure, use and inspection of the equipment concerned.

2. *Article 36 of the Convention. Medical examinations.* The Committee notes the Government's statement that there are different provisions on medical examinations concerning work that presents a special risk of illness. *The Committee requests the Government to provide further information on the content of these different provisions and to indicate the periodicity applied in practice for the required medical examinations.*

3. *Part V of the report form. Statistical data.* With reference to its latest comments, the Committee notes that in response to previous comments by the Central Organization of Finnish Trade Unions (SAK) the Government indicates that some 4,000 stevedores work within the scope of the occupational safety and health enforcement which are required to report accidents or injuries to the occupational safety and health authorities, who will inspect the matter. In this regard, the Government indicates that "nothing unusual" has surfaced in the inspections and statistics. *The Committee requests the Government to provide more detailed information on due outcome of the inspections carried out and to continue to keep it informed of the measures taken or envisaged to collect and report statistics on occupational accidents and diseases for dock work specifically.*

## Italy

### **Dock Work Convention, 1973 (No. 137) (ratification: 1981)**

*National policy to encourage permanent or regular employment for dockworkers.* The Committee notes the full and detailed report received from the Government in August 2007 which includes details of the dockers' national collective agreements adopted in 2005 and 2007. In reply to an earlier comment, the Government states that most dockers are employed under indefinite contracts by authorized port companies. The social partners have confirmed that indefinite

contracts should be the regular practice in the ports sector (article 59 of the national collective agreement of 26 July 2005). The Committee also notes that, in reply to previous comments, the Government reports that only dockworkers belonging to the staff of the registered companies are authorized to perform temporary work in ports and that when they are not assigned to work, full remuneration is ensured to them. *The Committee notes this approach with interest and requests the Government to continue to provide detailed information on the results obtained at tripartite level to give effect to the provisions of the Convention.*

## Japan

### **Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27) (ratification: 1931)**

1. The Committee notes the information supplied in the Government's report that no legislative change has occurred. It also notes the observations from the Japanese Trade Union Confederation (JTUC-RENGO), included in the Government's report, regarding the practical application of the Convention in relation to modern means of cargo handling, with particular reference to containers.

2. *Article 1 of the Convention. Marking of weight and application in practice.* The Committee notes the information provided by JTUC-RENGO that although, in their view, it was unlikely that harbour transport businesses, port workers and their trade unions were fully aware of the Convention and related national laws and regulations, the weight of packages above 1 metric tonne seemed to be generally marked. JTUC-RENGO considered however, that the owners of the goods, the packers of goods consigned as well as seaborne goods handling businesses (or forwarders) should be made better aware of the Convention and the rules for marking the weight of the package. It further noted that as export and import cargo was mostly containerized, it was impossible to check the weight of an individual piece of cargo and that, given the intention of the Convention, the actual weight of a container should be marked on the outside. Reference was made to an accident that occurred in which the bottom plate of a container had fallen out because cargo with a gross weight exceeding the ISO standard (30.48 metric tonnes) had been loaded into the container. In addition, JTUC-RENGO noted that since the gross weight was not marked on a marine container, container truck drivers often transported cargoes without knowing their contents or weight. As a result they were sometimes charged with overloading. When an accident happened the responsibility was placed entirely on the marine container transporter and the truck driver. JTUC-RENGO concluded that merely marking the weight of an individual package was not sufficient to ensure that marine container cargoes were transported safely and that a new Convention and national legislation in line with actual transportation needs was required. *With reference to the general observation that the Committee is making on the Convention at the present session on the manner in which the Convention is applied in relation to modern means of cargo handling, with particular reference to containers, and any difficulties encountered in this regard, the Committee invites the Government to provide any further detailed and up to date information it deems relevant to the Committee at its 79th Session in 2008.*

## New Zealand

### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1938)**

1. The Committee notes the detailed report supplied by the Government. It also notes the information concerning the repeal in 2003 of the Harbours Act and of the General Harbour Regulations and the publication in 2004 of the new code of practice for health and safety in port operations, replacing the Port Safety Guidelines of 1997. The Committee notes with interest the Government's information that this new code of practice is based on the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152). It also notes that, in its report concerning the application of the Convention, the Government refers almost exclusively to the new 2004 code of practice. *The Committee requests the Government to clarify the legal status of the new code of practice for health and safety in port operations of 2004, and to indicate the legislation in force giving effect to the provisions of the Convention.*

2. *Article 1 of the Convention. Scope of application.* The Committee notes that following the legislative developments indicated above, the main legislation applying the Convention appears to be the Health and Safety in Employment Act, 1992 and, as regards ships' lifting appliances, Maritime Rule No. 49 made under the Maritime Transport Act, 1994. It further notes that the scope of application of the Health and Safety in Employment Act, 1992, is restricted to persons working on board a ship on condition that: (a) the worker has a New Zealand employment agreement; or (b) the ship is: (i) registered in New Zealand; or (ii) a foreign ship on demise charter to a New Zealand operator. *With reference to the definitions of "processes" and "worker" in Article 1 of the Convention, the Committee requests the Government to clarify how full effect is given to the Convention in law and practice.*

3. *Article 17 and Part V of the report form. Application in practice.* The Committee notes the Government's reply to the observations of the New Zealand Council of Trade Unions (NZCTU) of 2001 concerning: (i) delays in obtaining assistance at weekends and at night; (ii) unclear jurisdictions in the field of safety and health in dock work; and (iii) available data for establishing the location of accidents and assessing the incidence and severity of incidents. The

Committee also notes that, in its latest report, the Government refers to new observations made by the NZCTU and replies to them. With regard to these observations, the Committee notes that although the NZCTU supports the Government's efforts to improve the application of the Convention, it considers that the Convention is not fully applied in practice with regard to the following points:

- (i) *Inspection visits and investigations in ports.* The Committee notes the statement by the NZCTU that the competent authority (Maritime New Zealand – MNZ) did not conduct an official investigation further to a serious port accident in 2006. In order to prevent future accidents, the maritime sector trade unions requested the setting up of random inspections since the NZCTU considers that regular inspections are anticipated and irregularities cannot be detected. The Committee notes that the Government states that the competent authority does not conduct an investigation for every incident reported. Moreover, the Committee notes that the NZCTU asks the MNZ to provide increased surveillance with regard to lifting appliances, particularly after defects in equipment have been observed, especially on vessels flying a foreign flag, random inspections having to be made preventively and not following accidents which necessitate repairs to equipment. The Committee notes the Government's indication that maritime safety inspectors do not have a duty to undertake random inspections but to inspect vessels before the unloading of cargo. The Government adds that cranes are tested every five years in addition to an annual visual inspection and they must be covered by a certificate of conformity. ***The Committee requests the Government to continue supplying information concerning the practical application of the Convention and, in particular, to indicate the manner in which it is ensured that health and safety provisions are observed in order to prevent accidents.***
- (ii) *Inspection service resources.* The Committee notes the statement by the NZCTU that the lack of inspection staff and resources and also restructuring make it impossible to establish a comprehensive and effective prevention system. The Committee also notes that the Government states that the budget of the Department of Labour, Health and Safety Services was increased in July 2007, thus enabling the identification of requirements, increase of staff, provision of advice and information, and reinforcement of the services responsible for application of the Convention. The Government adds that the creation of the "Workplace Group" is a restructuring measure designed to make the best use of resources, and new procedures for responding to any incident have now been in operation for five years. Finally, the Committee notes that the Department of Labour has established a new approach, including a policy to ensure more consistent enforcement of health and safety standards in ports and targeting workplaces with poorer performance. ***The Committee requests the Government to keep it informed of any progress made in this field and to send any available information enabling an evaluation of the effectiveness of the inspection services and also the impact of consistent application of health and safety standards in dock work.***
- (iii) *Consultation and action on safety and health issues.* The Committee notes the statement by the NZCTU that the reluctance of the directors of certain ports to consult the workers concerning operations and equipment connected with safety and health increases the risk of accidents. The NZCTU adds, however, that the MNZ has favoured a tripartite partnership including the establishment of training and safe working methods. The Committee notes the Government's indication that, in 2003, provisions concerning the participation of workers in the area of safety and health came into force, the employers being obliged to give the workers the opportunity to participate effectively in procedures designed to improve occupational safety and health. ***The Committee requests the Government to keep it informed of any progress made in this area, and to supply all available information enabling an evaluation of the impact of consultations and the participation of workers concerning industrial accidents and also a copy of the provisions which came into force in 2003 concerning the participation of workers in the area of safety and health.***

4. With regard to the invitation made by the Governing Body to the States parties to Convention No. 32 to consider the ratification of the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) – the ratification of which would automatically entail an immediate denunciation of Convention No. 32 – the Committee notes that the Government does not at present envisage ratifying this instrument. Although the Government and Business New Zealand strongly support the adoption of suitable provisions in safety and health for all workers in all sectors of activity, the Government considers that ILO Conventions covering specific sectors may be less appropriate than universal standards establishing a minimum framework for all sectors. ***The Committee would be grateful if the Government would keep it informed of all new developments in this respect.***

## Pakistan

### ***Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1947)***

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

Further to its previous observation based on the comments made by the Fishing Vessels Employees' Union of 1991 concerning the working conditions of coastal fishermen, the Committee notes from the Government's last report that the updated Pakistan Merchant Shipping Ordinance, 2001, is in the process of approval. The Government states that as soon as it is adopted, a copy of the text will be provided to the ILO. ***The Committee reiterates its hope that this text, as well as subsequent rules, will be adopted shortly and that their provisions will give effect to the Convention. The Committee requests the Government to provide a copy of the texts as soon as they have been adopted.***

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

## Panama

### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1971)**

1. The Committee notes the information communicated by the Government in its report in response to the Committee's previous comment. The Committee notes the information that the ongoing revision of the General Regulations on Safety and Health in Dock Work of the National Ports Authority (21 October 1988, *Official Gazette* 21-161, Agreement 388), has not yet been completed. ***The Committee expresses the firm hope that this revision will be completed soon and that in the context of this revision account will be taken of the following comments the Committee has made since 1996:***

1. *Article 2, paragraphs 2, 3 and 4, of the Convention.* The Committee notes that, as part of the revision of the General Regulations on Safety and Health in Dock Work, it is envisaged that these provisions of the Convention will be incorporated in the provisions of the regulations concerning the width of passageways along quaysides and wharves, and the provision of fencing for dangerous areas and passageways. ***The Committee recalls that paragraphs 2, 3 and 4 set the minimum dimensions which should be adopted to ensure compliance with these provisions as a whole.***

2. *Article 3, paragraph 3.* The Committee notes that it is envisaged that the provisions of this Article shall be incorporated into the revised regulations, so that all national ports will comply with them.

3. *Article 5, paragraphs 2 and 5; Article 6, paragraph 2; Article 8.* The Committee notes that the provisions of *Article 5, paragraphs 2 and 5* (concerning access to holds), *Article 6, paragraph 2* (safety measures in connection with deck openings, including fencing), and *Article 8* (specific measures required to ensure implementation), are to be included in the regulations so that national ports will apply them. ***The Committee requests the Government to keep the International Labour Office informed of any developments in this matter.***

4. *Article 9, paragraph 2(2).* The Committee notes that, according to the Government's report, the Maritime Authority of Panama (AMP) runs mechanical workshops responsible for producing statistics on the frequency of examinations and inspections. However, the Committee notes that the Government again refers to sections 29 and 30 of the General Regulations on Safety and Health in Dock Work, and recalls that these provisions do not specify the frequency of the examinations and inspections required. ***The Committee is therefore obliged to request the Government once again to take the necessary measures to ensure that the periods specified in this provision of the Convention are included in the regulations during the revision process.***

5. *Article 9, paragraph 2(7).* The Committee notes that sections 89, 92, 93, 95, 96, 99 and 136 of the regulations are cited by the Government in its report, and notes that section 92 introduces a special measure relating to the vertical hoisting of loads. However, the Committee notes that these sections are not specifically aimed at providing means of minimizing the risk of loads falling accidentally during hoisting or lowering by cranes or winches. ***The Committee once again requests the Government to take the necessary measures to ensure that the Convention is applied on this point.***

6. *Article 11, paragraph 1.* The Committee notes the provisions of sections 89 and 95 of the General Regulations which, according to the Government, give effect to this provision of the Convention. Section 95 provides that a signaller must maintain visual communication with the crane operator, who must follow only the signaller's instructions. The Committee notes that section 95 of the regulations concerns the operation of cranes in container terminals, although this provision of the Convention concerns hoisting systems in general, not only cranes. ***The Committee therefore requests the Government to take the necessary measures to ensure that this provision of the Convention is applied in full.***

7. *Article 11, paragraphs 2 and 8.* The Committee notes the Government's statement to the effect that the changes to the regulations will ensure that the provisions of the Convention are implemented in the ports administered and regulated by the Maritime Authority of Panama (AMP). ***The Committee hopes that when the regulations are revised, they will ensure that these provisions are implemented in cases of general loading and unloading operations.***

8. *Article 11, paragraphs 5, 6, 7 and 9.* Referring to its previous observations, the Committee reminds the Government of the need to adopt safety measures that will meet the requirements set out in each of these paragraphs regarding: escape of workers when employed in a hold or between decks in dealing with bulk cargo (*paragraph 5*); conditions for using a stage (*paragraph 6*); procedures for working in hold spaces (*paragraph 7*); and safe working loads for cranes (*paragraph 9*). ***The Committee hopes that the Government will adopt the necessary measures to ensure that these paragraphs of the Convention are implemented, as it no doubt will when the General Regulations are revised.***

9. *Article 14.* The Committee notes the provisions of sections 1, 9 and 41 of the General Regulations cited by the Government in its report, and notes once again that section 41 comes under Chapter I, Title V, of the regulations and thus concerns protective devices on loading and handling equipment. ***The Committee again requests the Government to indicate what legislative or administrative measures have been taken or are envisaged to ensure that this provision is also applied to the other elements referred to therein.***

10. *Part V of the report form.* ***The Committee requests the Government to supply extracts of inspection reports, and invites the Government to provide statistics and other details, for example, on the number and nature of any infractions and the nature and cause of any accidents recorded.***

11. ***The Committee requests the Government to communicate a copy of the revised General Regulations on Safety and Health in Dock Work, and to indicate any progress made in applying the Convention.***

2. The Committee takes the opportunity to recall that the Governing Body of the ILO has invited parties to Convention No. 32 to consider ratification of Convention No. 152, which revised Convention No. 32 (GB.268/LILS/5(Rev.1), paragraphs 99-101). Such ratification would automatically entail an immediate denunciation of Convention No. 32. The Committee also wishes to bring to the Government's attention an ILO code of practice in this

area, *Safety and health in ports* (Geneva, 2005). This code of practice is available, inter alia, through the ILO's web site by following the link, <http://www.ilo.org/public/english/protection/safework/cops/english/index.htm> *The Government is requested to keep the Committee informed of any developments in this respect.*

## Portugal

### **Dock Work Convention, 1973 (No. 137) (ratification: 1981)**

*National policy to provide permanent or regular employment for dockworkers.* The Committee notes the Government's report received in August 2007, which recalls the position of the employers' organizations that the Convention is inadequate and should be denounced. In the view of the General Union of Workers, the specific characteristics of dock work require the adoption of special rules, particularly in relation to occupational health and safety and the vocational training of the workers concerned. *The Committee refers to its previous comments and requests the Government to continue providing detailed information on the results achieved in a tripartite context with a view to improving the efficiency of work in ports, as required by the Convention.*

## Romania

### **Dock Work Convention, 1973 (No. 137) (ratification: 1975)**

*National policy to provide permanent and regular employment for dockworkers.* The Committee notes with interest the replies provided by the Government to its 2002 direct request, including the English version of the relevant provisions of Law No. 528 of 17 July 2007 by which Ordinance No. 22 of 29 January 1999 on port administration and port services was approved. The Government also appended a detailed text on Romanian Maritime Ports Operation Regulations, published by the National Company of Ports Administration, Constantza. Professional training is assured by a "port school", a non-profit association specialized in providing training for all categories of dockworkers. The Committee further notes that according to the statistical data provided in the report, the number of registered dockworkers remained stable (3,595 dockworkers were registered in January 2003 and 3,722 were registered in June 2007). *The Committee invites the Government to continue to provide information in its next reports on the results achieved at the tripartite level in improving the efficiency of work in ports (Part V of the report form).*

## United Republic of Tanzania

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1983)**

The Committee notes the information in the Government's report including responses to the Committee's previous comments. It notes the adoption of the Occupational Safety and Health Act, 2003 (No. 5), which repeals the Factories Ordinance, Chap. 297, of 1950 and notes with satisfaction that this Act gives effect to *Articles 4(1)(c) and 2(r); 4(2)(b), (o) and (q); 12; 36(2); 37; 38 and 41 of the Convention.*

The Committee is addressing a request directly to the Government on other matters.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 27** (*Argentina, Azerbaijan, Bangladesh, Bulgaria, Burundi, China: Macau Special Administrative Region, Czech Republic, Denmark, Estonia, France, France: French Guiana, Guadeloupe, Martinique, Réunion, Germany, Honduras, Hungary, Indonesia, Lithuania, Mexico, Pakistan, Papua New Guinea, Poland, Serbia, Slovakia, Slovenia, Ukraine, Viet Nam*); **Convention No. 32** (*Belgium, Chile, China, Croatia, Honduras, India, Kenya, Malta, Mauritius, Nigeria, Serbia, Singapore, Slovenia, Ukraine, United Kingdom: Isle of Man, Uruguay*); **Convention No. 137** (*Afghanistan, Australia, Costa Rica, Egypt, France, Guyana, Mauritius, Russian Federation, Uruguay*); **Convention No. 152** (*Cuba, Cyprus, Denmark, Egypt, France, Guinea, Lebanon, Mexico, United Republic of Tanzania*).

The Committee noted the information supplied by the following State in answer to a direct request with regard to **Convention No. 27** (*Croatia*).

## Indigenous and Tribal Peoples

### Colombia

#### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1991)

1. The Committee notes the communication from the Workers' Trade Union Confederation for the Oil Industry (USO), received on 31 August 2007, in relation to the comments made by the Committee in its last observation on the request concerning the application of the Convention to the communities of African extraction of Curvaradó and Jiguamandó. The communication was prepared jointly with the community councils of the Curvaradó and the Jiguamandó, the Inter-denominational Justice and Peace Commission, the Colombian Commission of Jurists and the José Alvear Restrepo Lawyers' Collective. The Committee notes that the communication was forwarded to the Government on 11 September 2007 and will examine it in detail at its next session, together with any comments that the Government considers it appropriate to make.

2. Nevertheless, due to the gravity and urgency of certain issues, and the irreversible consequences that certain situations referred to in the allegations may have, the Committee expresses its deep concern at the allegations of threats and violations of the right to life and the personal integrity of the inhabitants of these communities. The Committee refers in particular to the following allegations contained in the communication: (1) the presence of paramilitary groups in the community territory, including those known as *Aguilas negras* and *Convivir* and the allegation that they are tolerated by the official forces, and particularly army brigades XV and XVII. The paramilitary forces are reported to have established themselves in community lands in 2007 and to have made threats and accusations against the inhabitants of the communities of belonging to the guerrilla which, in view of the situation in the country, places their life at grave risk. The communication indicates that this intimidation is carried out as a result of the cultivation of the African palm and that all those obstructing the cultivation of palm oil in Curvaradó and Jiguamandó were threatened with being "cleaned up"; (2) impunity with regard to violations of the fundamental rights of members of the communities, such as the disappearance and murder in 2005 of Orlando Valencia, the leader of African extraction of Jiguamandó; (3) the "judicial persecution" of victims of human rights violations and the members of supporting organizations. The communication indicates that, even though there is sporadic guerrilla presence in the region, the communities are a civilian population and have decided to establish humanitarian zones which have been recognized by the Inter-American Court of Human Rights. ***The Committee urges the Government to take all the necessary measures without delay to guarantee the life and the physical and moral integrity of the members of the communities, to ensure that any persecution, threats or intimidation ceases and to ensure that effect can be given to the rights set out in the Convention in a climate of security. The Committee requests the Government to provide information on the measures adopted in this respect and to reply to the comments made by the Committee in its last observation. The Committee requests the Government, when making its comments on the USO communication, to provide detailed information on the manner in which measures are taken to give effect to Article 14 of the Convention respecting the lands of the Jiguamandó and Curvaradó communities.***

3. ***Taking into account the fact that the full reports on the application of the Convention will be examined next year, the Committee requests the Government to provide information on the implementation of the recommendations made by the Governing Body in November 2001 in the two reports adopted on the representations alleging failure to comply with the Convention by the Government of Colombia (GB.282/14/3 and GB.282/14/4).***

### Fiji

#### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (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:

1. *Articles 13–19 of the Convention. Land rights.* In its previous observation, the Committee noted two communications from the Fiji Commercial Services Union (FCSU) under article 23 of the ILO Constitution. The FCSU comments related to the system of management of land owned by the indigenous Fijians under the Native Land Act stating, inter alia, that there were no grievance procedures for resolving the growing number of land claims or disputes on the use to which the Native Lands Trust Board puts native lands, except through the Native Lands Commission, which is said to have too great a vested interest to be able to adjudicate objectively.

2. In its previous observation, the Committee took note of the complex political, legal and social situation underlying the communication submitted by the FCSU and requested the Government to comment on the degree to which it considers it can apply the Convention to the management of issues between elements of the indigenous population of the country, and to state whether it considers that the present system for resolving disputes over land rights is adequate for the needs of the population. While the Government failed to address these issues directly in its report, it reiterates that the indigenous landowners who are registered under the provisions of the Native Land Act make up the group of the national population that falls within the provisions of the Convention. It also states that the Native Lands Commission is charged with the duty of ascertaining the rightful and hereditary properties of the native owners; and that disputes regarding land boundaries or the chiefly title of each *mataquli*

(clan) or *tikina* (district) or province, if not settled otherwise, are to be referred to the Commission. *The Committee recalls the Government's obligation to ensure that the land rights of the indigenous population of the country are recognized and effectively protected, to ensure full enjoyment of these rights to the benefit of the communities concerned. It requests the Government to provide more detailed information on the activities of the Native Lands Commission, including any reports issued by the Commission. The Committee also asks the Government to indicate the procedures that are available to address grievances of indigenous landowners that relate to the management of their land, rather than to issues concerning title or boundaries.*

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

The Committee is also addressing a request directly to the Government on other points.

## Guatemala

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1996)**

1. The Committee notes that, in June 2007, the Governing Body adopted the report 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 representation involved allegations of a lack of prior consultation of the people concerned regarding the award of a licence (No. LEXR-902 of 13 December 2004) to the Izábal Exploration and Mining Corporation (EXMIBAL) to begin exploratory mining for nickel and other minerals in the territory of the indigenous Maya Q'eqchi people. The other crucial aspect referred to by the parties was the legal situation with regard to the lands. The FTCC claimed that it was not coherent that, on the one hand, the Government sells the lands to the communities and, on the other hand, cedes them under licence to mining companies. The Government stated that, if the communities do not own the land, there is no obligation to engage in consultations, and submitted that it was necessary for the communities or their members to hold titles of ownership to be eligible for consultations.

2. The Committee notes the recommendations made by the Governing Body, calling on the Government to take measures and supply information for examination by the Committee of Experts on the following matters:

- (a) to give full effect to *Article 15 of the Convention* and to engage in prior consultation in cases of exploration or exploitation of natural resources which may prejudice indigenous and tribal communities, and to ensure the participation of the peoples concerned in the various stages of the process, as well as in environmental impact studies and environmental management plans;
- (b) to endeavour to resolve any consequences of the granting of the exploration licence including by assessing, in consultation with the communities concerned, whether and to what degree their interests have been prejudiced, and where such prejudice is found, to ensure that fair compensation is provided, in accordance with *Article 15, paragraph 2*, of the Convention. It hopes that, in seeking solutions to the problems affecting communities which occupy or otherwise use lands for which the licence covered by the representation has been granted, the Government should go through representative institutions or organizations so as to be able to establish and maintain a constructive dialogue under the terms of *Article 6* so that the parties concerned can seek solutions to the situation faced by these communities, taking into account for this purpose paragraph 53 above;
- (c) to initiate a process of consultation before granting any exploration and exploitation licences covering the lands referred to in the representation and to maintain consultation and participation procedures with all the communities concerned which occupy or otherwise use these lands, whether or not they hold title of ownership, taking into account for this purpose paragraph 53 above;
- (d) in consultation with indigenous peoples, to take the necessary measures to guarantee the rights of ownership and possession of indigenous peoples over the lands referred to in *Article 14* of the Convention;
- (e) in consultation with indigenous peoples, to adopt transitional measures to protect these rights while the process of the regularization of title to lands is being completed;
- (f) to develop coordinated and systematic action, within the meaning of *Articles 2* and *33*, with the participation of indigenous peoples, when applying the provisions of the Convention;
- (g) to make progress in the formulation and adoption of the Indigenous Peoples Consultation Bill and the appropriate regulation of consultations to be undertaken in the case of exploration or exploitation of natural resources (minerals, forests, water, etc.), in accordance with *Article 15* of the Convention; this would foster the development of appropriate mechanisms for consultation and participation, thereby attenuating disputes relating to natural resources and laying the foundations for promoting processes of inclusive development.

3. The Governing Body also invited “the Office to pursue its technical assistance and cooperation with the Government so as to facilitate the establishment of the process of consultation envisaged in points (a), (b) and (c) above and to assist the Government in the formulation of the legislation referred to in point (g) above”.

4. *The Committee requests the Government to supply detailed information in its next report on the action taken further to the abovementioned recommendations, together with its reply to the comments made by the Committee in 2006.*

## Mexico

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1990)

1. The Committee notes the communication of the Government, dated 4 January 2007, containing its comments on the observations made by the Independent Union of Workers of La Jornada (SITRAJOR) concerning the report adopted by the Governing Body in March 2004 on the representations made by the Union of Academics of the National Institute of Anthropology and History (SAINAH), the Trade Union of Workers of the National Autonomous University of Mexico (STUNAM) and the Independent Union of Workers of La Jornada (SITRAJOR) (GB.289/17/3). It also notes a communication received on 3 September 2007 from the Mexican Union of Electricians (SME), which was forwarded to the Government on 17 September 2007.

2. *Communication of the Government of Mexico. Background.* The communication was provided in the context of the follow-up to the report of the Governing Body of March 2004 (GB.289/17/3). Pursuant to the recommendations contained in the Governing Body report, in 2004 the Committee requested the authors of the representation to provide the information requested in point (g) of paragraph 139 of the abovementioned report (forced sterilization). In 2006, the Committee noted the reports of the Commission for the Defence of Human Rights (CODDEHUM-GUERRERO) and of the National Human Rights Commission, provided by SITRAJOR, which referred to complaints, investigations, observations and recommendations regarding cases in which members of public health institutions, both state and federal, were alleged to have carried out vasectomies on indigenous men and placed intrauterine devices in indigenous women as a birth control method without their free, informed and shared consent, in the States of Guerrero and Oaxaca. It also noted the report on 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 the practice of forced contraception of women by tying their fallopian tubes without their consent. It noted the report of the Committee on the Elimination of Racial Discrimination (CERD) on the 15th periodic report of Mexico (CERD/C/473/Add.1), dated 19 May 2005, which refers to the same issue.

3. The Committee notes the Government's indication in its communication dated 4 January 2007 that the SITRAJOR communication provides certain documentary evidence with the objective of creating the impression that there is an intentional practice of sterilization by the authorities, which cannot be substantiated. The Government adds that the "Report on forced or involuntary sterilizations in a community" does not indicate its authorship, documentary source, date, or the community or location in which the alleged facts occurred, which undermines its validity. It further indicates that the paper prepared by the country Rapporteur for the report of Mexico to the CERD, of 15 February 2006, which indicates that the practice of forced sterilization of indigenous people has undoubtedly existed in Mexico (paragraph 29), is based on paragraphs 153, 154 and 155 of the document CERD/C/473/Add.1 and, in the view of the Government, these paragraphs do not provide a basis for inferring that forced sterilization actually exists. The Government referred to information from the Office of the Attorney-General of the Republic (PGR), that no substantiated record of such acts has been found, nor has any investigation been carried out based on complaints of alleged abuses against the peoples of these communities on the grounds of sexual and reproductive health practices (reports are attached by the delegations from Oaxaca and Guerrero of the Office of the Attorney-General dated October 2006).

4. *The case of Oaxaca.* With regard to the allegations of the placing of intrauterine devices against the will of the person concerned, the National Human Rights Commission issued recommendation No. 46/2002 in which it called for the following: (i) administrative responsibilities to be established and the Public Prosecutor's Office informed; and (ii) the personnel of the Mexican Social Security Institute (IMSS) to be instructed to train family planning staff on informed consent. With regard to the first point, in accordance with the Federal Act on public servants, there is a period of prescription of three years for the imposition of penalties and, as the alleged offences occurred on 7 January 2000 and the internal supervisory authority was notified on 10 March 2003, the IMSS was barred from taking any action within its own responsibilities. With regard to the second recommendation concerning training, the Government attaches materials relating to the training provided on family planning and reproductive health and indicates that the fourth report of the National Human Rights Commission indicates that recommendation 46/2002 has been given full effect.

5. *The Guerrero case.* With reference to the communication from SITRAJOR alleging that vasectomies were carried out on 14 men from Ojo de Agua, Ocotlán, La Fátima and El Camaleón, the Committee notes recommendations Nos 041/99 and 035/2004 of the Committee for the Defence of Human Rights of Guerrero which call for: (1) the conducting of an investigation; (2) the compensation of those affected; and (3) the issuing of instructions to the personnel of the health secretariat so that family planning policies are in compliance with the Convention.

6. The Committee notes that the Government provides information on numerous reproductive health activities and programmes and, in particular, the signing of a letter of intent aimed at the strengthening of inter-institutional collaboration for the reproductive health of the indigenous population.

7. *Articles 2 and 3 of the Convention.* The Committee emphasizes that forced sterilization constitutes a serious violation of the Convention. The Committee draws the Government's attention to its obligation under *Article 2* of the Convention to guarantee respect for the integrity of indigenous peoples and their rights. This requires the immediate

adoption of effective measures to investigate and punish rapidly these acts, when they occur. *The Committee, therefore, requests the Government to provide information on any measures adopted in cooperation with indigenous peoples to prevent these intolerable practices as alleged in this case, and, where appropriate, to identify and punish those responsible, and to guarantee remedies for victims.*

8. *Articles 2, 25(2) and 33. Coordinated and systematic action with the participation of indigenous peoples and cooperation in health services.* The Committee recalls that, in accordance with *Article 25(2)* of the Convention, “health services shall, to the extent possible, be community-based. These services shall be planned and administered in cooperation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.” Moreover, *Articles 2 and 33* refer to coordinated and systematic action in cooperation with the peoples concerned in the policies and programmes affecting them. For many years, the Committee has been reiterating the need to institutionalize the participation of indigenous peoples in policies which affect them, in accordance with *Articles 2 and 33*, as an essential framework for the proper application of the other provisions of the Convention. *The Committee requests the Government to promote community-based health services for indigenous peoples with their full participation and to provide information in this respect. The Committee requests the Government, with the representative organizations of indigenous peoples, to strengthen consultation and participation bodies so that they can effectively participate in the public policies which affect them, from their design to their evaluation. It particularly requests the Government to include indigenous peoples in reproductive health programmes at the national and local levels so that these complex questions can be addressed and resolved in the country through the bodies and procedures prescribed by the Convention. The Committee asks the Government to keep it informed on this subject.*

9. *Communication from the Mexican Union of Electricians (SME).* The Committee notes the allegations contained in this communication of violations of the rights of consultation and participation of indigenous peoples in the case of the hydroelectric project “Presa La Parota”. The Committee will examine this communication in detail at its next session, together with any comments that the Government may consider it appropriate to make. When making comments, please indicate in particular the manner in which, when giving effect to *Article 15(2)* of the Convention in this case, account was taken of the provisions of *Article 13(2)* of the Convention.

10. *The Committee requests the Government in its next report, in addition to its comments on the issues addressed by the Committee in this observation, to reply to the comments made by the Committee in 2005 and 2006. The Committee requests the Government to accord special attention to the comments made by the Committee to follow up the recommendations of the Governing Body in relation to three representations: (1) the Governing Body report adopted in March 2004 (GB.289/17/3): the Committee expects the Government to address the issues of consultation, constitutional reform and land rights, as well as other matters raised in the allegations by SITRAJOR; (2) the Governing Body report adopted in June 2006 (GB.296/5/3): the Committee is awaiting the Government’s first report on the follow-up measures taken in relation to the recommendations made by the Governing Body; and (3) the Governing Body report adopted in June 1998 (GB.272/7/2): the Committee examined a communication in 2005 from the National Union of Education Workers (SMTE) alleging failure to comply with the recommendations made by the Governing Body in the above report, which essentially relate to the lands of the Huichol. The Committee requests the Government to provide detailed information on these matters.*

11. *Noting that a large proportion of the representations and communications addressed by the Committee refer to consultation and participation, the Committee requests the Government to provide information on the specific measures adopted to set up appropriate bodies and machinery for consultation and participation, to seek solutions that are inclusive of the various interests at stake on the basis of dialogue, to prevent the recurrence of disputes relating to the issue of consultation and participation and to keep the Committee informed in this respect.*

## Paraguay

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169) (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:

1. The Committee notes the information contained in the Government’s report, received in March 2006, the information provided by the Government to the Conference Committee on the Application of Standards in June 2006 and the ensuing debate, as a result of which the Committee on the Application of Standards urged the Government to adopt measures to enable it to send on a regular basis the information requested by the Committee of Experts. It emphasized the importance of providing information on the practical application of the Convention, in particular regarding the various aspects relating to the recruitment and conditions of employment of indigenous persons. It recalled the Government’s obligation to consult and ensure the participation of indigenous peoples with respect to measures that might affect them and it suggested that the Government should consider requesting further ILO technical assistance regarding the application of the Convention. The Committee notes that although all the information requested on the application of the Convention in practice has not been provided, the Government has made an effort to gather information in its report and to submit additional information during the Conference Committee on the Application of Standards. *The Committee hopes that the Government will make efforts to provide its report on the application of the Convention within the established time limits and that, in particular, it will provide information on the application in*

*practice of certain provisions indicated in the following paragraphs and the direct request. The Committee invites the Government to request the Office's technical assistance with a view to examining possible solutions to the problems of application indicated in the Committee's comments.*

### **Recruitment and conditions of employment**

2. *Article 20 of the Convention.* With regard to discrimination in relation 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 Government's indication that with the cooperation of the ILO, a field study was undertaken, which is summarized in the document entitled "Debt Bondage and Marginalization in the Paraguayan Chaco". The study shows that the labour situation of indigenous communities in the Paraguayan Chaco is often a result of cultural issues. The Government adds that the document was subjected to tripartite analysis in seminars in which the participants included representatives of indigenous communities and that the Ministry of Justice and Labour dispatched labour inspectors to ascertain the situations described. The Committee notes with interest the Inter-Institutional Cooperation Agreement between the Ministry of Justice and Labour and the municipal authorities of Mariscal José Félix Estigarribia (the centre of the Paraguayan Chaco). Pursuant to the Agreement, a regional office of the General Directorate of Labour will be established to cover cases in the western region of the country, and the officials in that office will participate in radio programmes broadcast widely in the Chaco region to disseminate information regarding the labour rights of workers and employers inter alia. ***The Committee hopes that the Government will provide all the necessary means to the abovementioned office so that it is able to take effective action against discrimination and forced labour, and to ensure decent work for indigenous peoples. The Committee, in particular, asks the Government to keep it informed of the activities undertaken by the regional office to eliminate forced labour and discrimination and to give effect to Article 20 of the Convention and on the results and impact achieved in practice, particularly with regard to the situation on ranches and in Mennonite communities. Please also provide information on the number and outcome of inspections undertaken and the measures adopted as a result.***

### **Consultation and participation – coordinated and systematic action**

3. *Article 6. Consultation.* The Committee notes that according to the report, Act No. 2822, "the Statutes of Indigenous Peoples and Communities", approved by the National Congress on 3 November 2005, which repealed Act No. 904/81, "Statute of Indigenous Communities", was partially vetoed by the executive authority upon the proposal of the Paraguayan Indigenous Institute (INDI) and representative indigenous organizations on the ground that it contained unconstitutional provisions and violated the rights of indigenous communities recognized in the Constitution. It also notes the Government's indication that Bill No. 2822 was the culmination of a process initiated in March 2004 in the context of the programme for the institutional strengthening of the INDI, during which consultations were held with indigenous peoples through workshops, personal interviews with indigenous leaders, working meetings and visits to communities. The process concluded with an Indigenous Congress held in March 2005, which issued guidance for more effective application and compliance with constitutional rights, including the amendment of Act No. 904/81, which gave rise to the submission of the above Bill to the National Congress without a final review by the representative indigenous organizations. In its previous comments, the Committee noted the communication of the National Union of Workers (CNT) received on 10 August 2001, according to which the Bill referred to above governs the operation of the institutions responsible for the national indigenous policy, and observed that the obligation of consultation had not been given effect. ***As the Government plans to adopt legislation governing the rights of indigenous peoples at the national level, the Committee hopes that the Government, in the process of the adoption of the legislation on indigenous rights, will comply with the requirement of prior consultation in accordance with Article 6 of the Convention. The Committee considers that the consultation and participation machinery envisaged in the Convention contributes to the progressive implementation of the Convention on indigenous peoples. It further considers that by engaging in genuine dialogue with these peoples on issues which affect them, progress will be made in the development of inclusive instruments which will contribute to reducing tension and increasing social cohesion. The Committee hopes that the Government will keep it informed regarding the measures adopted or envisaged to ensure consultation within the meaning of the Convention on the relevant legislative and administrative measures, and particularly with regard to the Bill vetoed by the executive authority.***

4. *Articles 2 and 33. Coordinated and systematic action with the participation of indigenous peoples.* The Committee also wishes to draw the Government's attention to the fact that *Articles 2 and 33* of the Convention provide for coordinated and systematic action, with the participation of indigenous peoples, from the planning to the evaluation of the measures envisaged in the Convention. ***The Committee urges the Government to make every effort, in cooperation with the peoples concerned, to achieve progress in the implementation of these Articles.*** Indeed, the consultation envisaged by the Convention goes beyond consultation on specific cases and requires the whole system for the application of the provisions of the Convention to be implemented in a systematic and coordinated manner in cooperation with indigenous peoples. This presupposes a gradual process of the establishment of appropriate bodies and machinery for this purpose. ***The Committee requests the Government to provide information on the measures adopted in this respect.***

5. *Part VIII of the report form.* The Committee, considering that the Convention is fundamentally an instrument promoting dialogue and participation, wishes to remind the Government that this point of the report form, approved by the Governing Body, indicates that "although such action is not required, the Government may find it helpful to consult organizations of indigenous or tribal peoples in the country, through their traditional institutions where they exist, on the measures taken to give effect to the present Convention, and in preparing reports on its application". ***The Committee asks the Government to indicate whether it is planning to hold such consultations.***

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

The Committee is addressing a request directly to the Government.

## Peru

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1994)

1. The Committee takes note of the Alternative Report of 2006 sent by the General Confederation of Workers of Peru (CGTP) on Peru's compliance with the Convention, received on 17 October 2006 and sent to the Government on 17 November 2006. The abovementioned report was prepared with the participation of the Working Group on Indigenous Peoples of the National Coordinating Committee on Human Rights and the following organizations: Interethnic Association for the Development of the Peruvian Rainforest (AIDSESEP), the Farmers' Confederation of Peru (CCP), the National Agrarian Confederation (CNA) and the National Coordinating Committee of Communities affected by Mining (CONACAMI). The Committee also notes a communication from the General Union of Wholesalers and Retailers Grau Tacna Commercial Centre (SIGECOMGT), received on 30 July 2007 and sent to the Government on 20 August 2007.

2. The Committee notes that on 20 August 2007 the Government sent a letter indicating that the severe earthquake in Peru on 15 August 2007 has seriously affected facilities at the Ministry of Labour's headquarters, bringing activities to a standstill and preventing a timely response to the Committee's requests. The Committee understands the reasons cited by the Government and expresses its solidarity towards those affected by such a major natural disaster. It will examine the abovementioned communications in detail together with the Government's next report and any comments the Government may wish to make.

3. *The Committee invites the Government to provide detailed information on the following:*

- (a) *Article 1 of the Convention: The peoples protected by the Convention: the steps taken, including legislative measures, to ensure that all those referred to in Article 1 of the Convention are covered by the Convention, regardless of the term applied to them, bearing in mind that the Convention's concept of "indigenous peoples" is broader than the community of which such peoples are a part.*
- (b) *Articles 13(2) and 15 of the Convention: Consultation and natural resources: the measures adopted in consultation with, and with the participation of, indigenous peoples, particularly through their representative institutions, in order to establish or maintain appropriate procedures for consulting indigenous peoples in order to determine whether and to what extent their interests will be affected, before undertaking or authorizing any programmes for prospecting or using natural resources in the case of subsurface resources belonging to the State or other resources over which the State has rights and which are located in the lands and territories defined in Article 13(2) of the Convention.*
- (c) *Articles 2, 7 and 33 of the Convention: Coordinated and systematic action with the participation of indigenous peoples: the measures adopted to expand the institutional basis for indigenous participation in public policies affecting indigenous peoples in accordance with Articles 2, 7 and 33 of the Convention. Please report on progress made in this respect.*

4. *The Committee invites the Government to provide the abovementioned information in its next report together with the information requested by the Committee in 2005, particularly in respect of the application of Article 14 of the Convention (lands).*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 169** (Fiji, Paraguay, Bolivarian Republic of Venezuela).

## ***Specific Categories of Workers***

### **Direct requests**

Requests regarding certain points are being addressed directly to the following States: **Convention No. 110** (*Cuba*); **Convention No. 149** (*Congo, Kyrgyzstan*); **Convention No. 172** (*Luxembourg*).

## ***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)***

### **Afghanistan**

The Committee notes with interest the information provided by the Government indicating that the instruments adopted by the Conference between the 71st Session (June 1985) and the 95th Session (June 2006) were submitted to the National Assembly on 18 April 2007. It welcomes the progress achieved in this respect and hopes that the Government will continue to provide regularly the information required on the constitutional obligation to submit the instruments adopted by the Conference to the National Assembly.

### **Angola**

1. The Committee asks the Government to provide information with regard to the submission to the National Assembly of the instruments adopted by the Conference at its 91st, 92nd, 94th and 95th Sessions (2003–06).

2. The Committee requests the Government to provide information on the submission to the National Assembly of the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180) (79th Session, 1992), the Protocol of 1995 to the Labour Inspection Convention, 1947 (82nd Session, 1995), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) (86th Session, 1998).

### **Antigua and Barbuda**

The Committee notes 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 11 sessions held between 1996 and 2006 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

### **Argentina**

The Committee notes with interest the detailed information concerning the submission to the National Congress of the instruments adopted at the 85th, 86th, 88th, 90th and 92nd Sessions of the Conference, which was provided by the Government in July 2007. The message from the Executive to the National Congress, dated 25 January 2001, noted that the Industrial Union of Argentina and the General Confederation of Labour, in the same way as the Ministry of Labour, are in favour of the ratification of Convention No. 181. Favourable views were also expressed, in the message of the Executive to the National Congress dated 23 April 2007, relating to the ratification of Convention No. 155 and its Protocol of 2002. The Government also provided detailed information on the submission to Congress, on 24 August 2007, of the instruments adopted at the 84th (Maritime) Session of the Conference (October 1996). The Committee welcomes the

progress achieved and hopes that the Government will continue providing the relevant information on a regular basis concerning the submission to the National Congress of the instruments adopted by the Conference.

## Armenia

1. The Committee notes with interest the information provided by the Government indicating that all the Conventions and Recommendations adopted by the Conference at the sessions held between 1993 and 2006 were submitted to the National Assembly on 25 May 2007. It also notes that four Conventions were ratified (Conventions Nos 173, 174, 176 and 182), six Conventions are still under examination (Conventions Nos 175, 177, 181, 183, 184 and 187), and five Conventions have been considered as not applicable to Armenia at the present stage (the Conventions adopted at the Maritime Sessions of the Conference in October 1996 and February 2006). The Committee welcomes the progress achieved in this respect and hopes that the Government will continue to provide regularly the information required on the constitutional obligation to submit all the instruments (Conventions, Recommendations and Protocols) adopted by the Conference to the National Assembly.

2. The Committee notes that the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, and the Protocol of 1995 to the Labour Inspection Convention, 1947, were not mentioned by the Government in its communication. It asks the Government to provide the corresponding information regarding the submission of the 1990 and 1995 Protocols to the National Assembly.

## Azerbaijan

The Committee notes the information provided by the Government in September 2007 indicating that the Maritime Labour Convention, 2006, was submitted to the State Maritime Administration for its examination. It refers to its previous comments 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 and 95th Sessions of the Conference. Please also indicate the date of submission of Recommendation No. 195 to the National Assembly.

## Bahamas

The Committee notes with regret that the Government has not replied to its previous observations. It asks the Government to supply information on the submission to Parliament of the instruments adopted at seven sessions of the Conference held between 2000 and 2006.

## Bahrain

The Committee recalls its previous comments and asks the Government to provide the other information requested by the questionnaire at the end of the 2005 Memorandum in relation to the submission to the competent authorities, within the meaning of article 19 of the ILO Constitution (that is, the National Assembly), of the instruments adopted by the Conference at seven sessions held between 2000 and 2006.

## Bangladesh

The Committee notes with regret that the Government has not replied to its previous comments. It asks again 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 and 95th Sessions.

## Belize

The Committee asks the Government to take measures in order to fulfil its constitutional obligation to submit the instruments adopted by the Conference to the National Assembly. It hopes that the Government will supply information on the submission to the National Assembly of the pending instruments adopted by the Conference at its 84th (Maritime) Session (October 1996), and the other 16 sessions held between 1990 and 2006 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Bolivia

1. In its 2005 observation 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 also 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.

2. The Committee asks the Government to provide all the information required by the questionnaire at the end of the *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, revised by the Governing Body in March 2005, on the submission to the National Congress of all the remaining Conventions, Recommendations and Protocols adopted by the Conference between 1990 and 2006.

## **Bosnia and Herzegovina**

The Committee notes the communication received in May 2007 indicating that the instruments pending submission have been forwarded to the relevant authorities in Bosnia and Herzegovina for their consideration and possible ratification. It further understands that, 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 the social partners of the entities and the Bričko District for their examination with a view to an eventual ratification. The Committee welcomes this positive development and 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 2006.

## **Brazil**

1. The Committee notes with interest that, by Message No. 56 of 1 February 2007, the Executive submitted Convention No. 185 to the National Congress for ratification.

2. The Committee recalls that the Tripartite Committee on International Relations (CTRI) in March 2006 proposed the ratification of Conventions Nos 150, 151 and 185. The CTRI also requested the Ministry of Foreign Affairs to take the necessary measures for the submission to the National Congress of 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). The Committee hopes that the Government will soon be in a position to announce that the above Recommendations have in practice been submitted to the National Congress.

3. The Committee recalls that the submission to the National Congress is still pending of Conventions Nos 128 to 130, 149 to 151, 156 and 157 and the other instruments adopted at the 52nd, 78th, 79th, 81st, 82nd (Protocol of 1995), 83rd, 84th, 85th, 86th, 88th, 90th, 92nd, 94th and 95th Sessions of the Conference.

## **Burkina Faso**

The Committee notes the information supplied in August 2007 on the consultations held in order to submit the Maritime Labour Convention, 2006. It asks the Government to provide the relevant information concerning the submission to the National Assembly of the instruments adopted at the seven sessions of the Conference held between 2000 and 2006.

## **Cambodia**

The Committee refers to its previous observations and recalls that the instruments adopted by the Conference at its 55th (Maritime) Session (October 1970), and at the sessions held from June 1973 to June 1994 (58th (Convention No. 137 and Recommendation No. 145), 59th to 63rd, 64th (Convention No. 151 and Recommendation No. 159), and 65th to 81st Sessions) are pending to be submitted to the competent authorities. It reiterates its hope that the Government will soon be in a position to transmit the relevant information regarding the submission to the National Assembly of the instruments adopted from the 82nd to the 95th Sessions of the Conference, held from 1995 to 2006.

## **Cameroon**

The Committee notes with regret that the Government has not provided information since June 2002 on the matters raised in previous observations. It once again requests the Government to provide all the relevant information concerning the submission to the National Assembly of the instruments adopted by the Conference at the 24 sessions held from 1983 to 2006, that is at its 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions.

## Cape Verde

The Committee notes with regret that the Government has provided no information on the submission to the competent authorities of the instruments adopted by the Conference during 12 sessions held between 1995 and 2006 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Central African Republic

The Committee recalls that the ratification of Conventions Nos 120, 122, 131, 142, 144, 150, 155 and 158 was registered on 5 June 2006. The Committee refers to its previous observations and hopes that the Government will soon be in a position to announce the submission to the National Assembly of the instruments adopted by the Conference at 19 sessions held since 1988 (75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Chad

The Committee notes with regret that the Government has not provided the information requested for a number of years. It once again asks the Government to provide the information requested in the questionnaire at the end of the Memorandum on the submission to the National Assembly of the instruments adopted at 11 sessions of the Conference held between 1993 and 2006 (80th, 81st, 82nd, 83rd, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Chile

The Committee refers to its previous observations and requests the Government to provide all the information required on the submission to the National Congress of the instruments adopted at 11 sessions of the Conference held between 1996 and 2006 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Colombia

The Committee refers to its 2007 observation on the application of Convention No. 144 and once again asks the Government to provide all relevant information on the submission to the Congress of the Republic of the 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 and 95th Sessions of the Conference.

## Comoros

The Committee notes with regret the substantial delay in relation to compliance with the obligation to submit the instruments adopted by the Conference. The Committee recalls that information is missing on the submission to the competent authority of the instruments adopted by the Conference at 15 sessions held between 1992 and 2006 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Congo

The Committee notes with regret that the Government has not provided information on the measures taken to overcome the substantial delay in its submission to the National Assembly of the instruments adopted by the Conference. It requests the Government to adopt the necessary measures for the submission to the National Assembly of the instruments adopted at the 54th (Recommendations Nos 135 and 136), 55th (Recommendations Nos 137, 138, 139, 140, 141 and 142), 58th (Convention No. 137, Recommendation No. 145), 60th (Conventions Nos 141 and 143, Recommendations Nos 149 and 151), 62nd, 63rd (Recommendation No. 156), 67th (Recommendations Nos 163, 164 and 165), 68th (Convention No. 157 and Recommendations Nos 167 and 168), 69th, 70th, 71st (Recommendations Nos 170 and 171), 72nd, 74th, 75th, (Recommendations Nos 175 and 176) Sessions, and between 1990 and 2006 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions of the Conference).

## Côte d'Ivoire

The Committee refers to its previous observations and asks the Government to provide all relevant information on the submission to the National Assembly of the instruments adopted at 11 sessions of the Conference held between 1996 and 2006 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th 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 2006 are submitted to the Croatian Parliament.

## **Democratic Republic of the Congo**

Referring to its previous observations, the Committee requests the Government to provide all relevant information concerning the submission to Parliament of the instruments adopted at 11 sessions of the Conference held between 1996 and 2006 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## **Djibouti**

The Committee asks the Government to provide the required information on the submission to the National Assembly of the instruments adopted at 25 sessions of the Conference held between 1980 and 2006 (66th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions of the Conference).

## **Dominica**

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 14 sessions held between 1993 and 2006 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions) have been submitted to the House of Assembly.

## **El Salvador**

The Committee recalls that the Government reported, in October 2006, that it had initiated the legal studies for the submission of the instruments adopted at the 95th Session of the Conference. 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 and 95th Sessions (2003–06).

## **Equatorial Guinea**

The Committee notes with regret that the Government has not replied to its previous observations. It asks the Government to provide information on the submission to the competent authorities of the instruments adopted by the Conference at 13 sessions held between 1993 and 2006 (80th, 81st, 82nd, 83rd, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## **Ethiopia**

The Committee asks the Government to provide all 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 and 95th Sessions.

## **Fiji**

The Committee notes the detailed information provided by the Government in May 2007 concerning the decisions taken by the Cabinet with regard to the ratification of several Conventions. It also notes that since December 2006 Fiji is being run by an interim Government appointed by the army. It notes that before the restoration of democracy it will not be possible to submit the instruments adopted by the Conference to the Parliament of Fiji. It refers to its comments on the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and hopes that the Government will announce soon that the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions have been submitted to the Parliament of Fiji.

## Gabon

1. The Committee refers to its previous observations and invites the Government to report on Parliament's decision regarding Conventions Nos 122, 138, 142, 151, 155, 176, 177, 179, 181, 184 and 185.

2. The Committee asks the Government to send the relevant 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 and 95th Sessions of the Conference.

## Gambia

The Committee recalls that Gambia has been a Member of the Organization since 29 May 1995. It also 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 hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum on the submission to the National Assembly of instruments adopted by the Conference at 12 sessions held between 1995 and 2006 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Georgia

The Committee refers to its previous observations and hopes that the Government will soon be able to announce that the instruments adopted by the Conference at 12 sessions held between 1993 and 2006 (80th, 81st, 82nd, 83rd, 84th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions) have been submitted to Parliament.

## Ghana

1. 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 seven sessions held between 2000 and 2006 have been submitted to Parliament.

2. 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).

## Grenada

The Committee notes with interest the information provided by the Government indicating that by Cabinet Conclusion No. 486, dated 12 March 2007, a list of Conventions and Recommendations was endorsed by Cabinet and will be tabled in Parliament. Tripartite consultation on the proposed instruments took place at meetings of the Labour Advisory Board. The Committee would appreciate receiving further information on the date on which the instruments adopted by the Conference at 13 sessions held between 1994 and 2006 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions) were submitted to the Parliament of Grenada.

## Guinea

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 ten sessions held by the Conference between October 1996 and June 2006 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Haiti

The Committee notes with interest that the ratification of Convention No. 182 was registered on 19 July 2007. It recalls that the instruments in respect of which the Government has not provided information on the submission to the competent authorities are the following:

- (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 18 sessions of the Conference held from 1989 to 2006.

## Islamic Republic of Iran

The Committee notes with interest the information sent by the Government in October 2007 indicating that the Conventions and Recommendations adopted by the Conference at its 84th, 85th, 86th, 88th, 89th, 90th, 92nd, 95th and 96th Sessions have been submitted to the appropriate committees of the Islamic Consultative Assembly. The Committee welcomes the steps taken by the Government to fulfil the constitutional obligation to submit instruments and hopes that the Government will shortly be able to announce that the Protocols adopted at the 84th and 90th Sessions (Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, and Protocol of 2002 to the Occupational Safety and Health Convention, 1981) and the Conventions adopted at the 91st and 94th Sessions (Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the Maritime Labour Convention, 2006) have been submitted to the Islamic Consultative Assembly. The Committee also asks the Government to indicate the dates when the Conventions and Recommendations mentioned in its October 2007 communication were submitted to the Islamic Consultative Assembly.

## Ireland

The Committee hopes that the Government will be able to announce soon that the instruments adopted by the Conference at seven sessions held between 2000 and 2006 (88th, 89th, 90th, 91st, 92nd, 94th and 95th) were submitted to the *Oireachtas* (Parliament).

## Kazakhstan

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authorities of instruments adopted by the Conference at 14 sessions held between 1993 and 2006.

2. The Committee notes that the Republic of Kazakhstan has been a Member of the Organization since 31 May 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 measures to be taken with regard to the instruments that have been submitted.

3. 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.

## Kenya

The Committee notes the information provided by the Government indicating that the Labour Advisory Board is scheduled to meet in October 2007 to discuss the pending instruments and Protocols before they are submitted to the competent authority. It hopes that the Government will soon be in position to provide all the information requested on the submission to the National Assembly of the Protocols of 1995 and 1996 (adopted at the 82nd and 84th Sessions), and of the instruments adopted by the Conference at its 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions.

## Kiribati

The Committee refers to its previous comments and recalls that the Government indicated that, after an ILO mission in October 2005, a memorandum for submission to Cabinet and to the *Maneaba ni Maungatabu* (House of Assembly) of the instruments adopted at the 88th, 89th, 90th and 91st Sessions of the Conference had been prepared. It hopes that the Government will soon be in a position to announce the submission to the House of Assembly of the instruments adopted by the Conference at the seven sessions held between 2000 and 2006 (88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Kyrgyzstan

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authorities of instruments adopted by the Conference at 15 sessions held between 1992 and 2006.

2. 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.

3. 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

1. The Committee recalls that the Government had indicated in May 2006 that, according to the national Constitution, the National Assembly was the legislative body. It hopes that the Government will soon indicate that the instruments adopted by the Conference during 12 sessions held between 1995 and 2006 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions of the Conference) have been submitted to the National Assembly.

2. The Committee urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

## Liberia

1. The Committee notes that the ratification by Liberia of the Maritime Labour Convention, 2006, was registered on 7 June 2006. It refers to its previous comments and asks the Government to indicate whether the instruments adopted by the Conference at its 88th, 89th, 90th, 91st, 92nd and 95th Sessions have been submitted to the National Legislature.

2. The Committee recalls that the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1995 to the Labour Inspection Convention, 1947, were not mentioned by the Government in its previous communications. It asks the Government to provide the corresponding information regarding the submission of the 1990 and 1995 Protocols to the National Legislature.

## Libyan Arab Jamahiriya

The Committee refers to its previous observations and reiterates its hope that the Government will soon be in a position to provide the other 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 11 sessions of the Conference held between 1996 and 2006 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Madagascar

The Committee notes with interest the information provided by the Government indicating that all the instruments adopted by the Conference at the sessions held between 1970 and 2001 were submitted on 1 June 2007 to the President of the National Assembly and the Senate. It also notes that the ratification of Conventions Nos 105 and 185 was registered on 6 June 2007. It welcomes the progress achieved in this respect and hopes that the Government will continue to provide regularly the information required on the constitutional obligation to submit the instruments adopted by the Conference to the National Assembly.

## Mongolia

The Committee asks the Government to indicate if the instruments adopted by the Conference at ten sessions held between 1995 and 2006 (82nd, 83rd, 84th, 85th, 86th, 90th, 91st, 92nd, 94th and 95th Sessions) were submitted to the State Great Khural.

## Mozambique

The Committee notes the detailed information provided by the Government in reply to its previous comments. The Government recalls that up to 2003 it gave priority to the ratification of the eight fundamental Conventions. It then adopted new legislation on labour and the public service, the provisions of which are directly related to the instruments adopted by the Conference between 1996 and 2006. The Government adds that it is also giving priority to the ratification of the 1997 Instrument of Amendment to the ILO Constitution. The Committee once again notes the difficulties faced by

the Government in relation to the translation into Portuguese of the instruments adopted by the Conference and the assistance that can be provided by the Governments of Brazil and Portugal in this respect. The Government further indicates that it received from Brazil a Portuguese version of the Maritime Labour Convention, 2006, which has been forwarded to the competent government bodies so that the Government can submit the Convention to Parliament with its recommendations in the near future. The Government once again expresses the hope that it will overcome the difficulties that have been encountered so as to be in a position to submit some of the pending instruments, and also Conventions Nos 129 and 155 to the competent authorities. The Committee requests the Government to continue providing information on the procedures that have been followed for the ratification of the above Conventions. The Committee hopes that the Government will continue taking steps in practice with a view to the effective submission to the Assembly of the Republic of the instruments adopted at the 11 sessions of the Conference held between 1996 and 2006.

## **Namibia**

The Committee refers to its previous comments and asks the Government to provide all relevant information on the submission to the National Assembly of the instruments adopted by the Conference at the 88th, 91st, 92nd, 94th and 95th Sessions (2000-06) as well as Recommendations Nos 192 and 193 and the Protocol of 2002 (89th and 90th Sessions).

## **Nepal**

The Committee notes that the ratification of Conventions Nos 105 and 169 was registered in August and September 2007. It asks the Government to report on the submission to the House of Representatives on the instruments adopted by the Conference at its 82nd, 84th, 86th, 88th, 90th, 91st, 92nd, 94th and 95th Sessions. It refers to its 2006 observation on the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and asks the Government to report on the prior tripartite consultations that should take place with social partners on the proposals to be made to the House of Representatives before submitting the instruments adopted by the Conference.

## **Niger**

The Committee refers to its previous observations and requests the Government to supply the required information on the submission to the National Assembly of the instruments adopted by the Conference at ten sessions held between 1996 and 2006 (83rd, 84th, 85th, 86th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## **Nigeria**

The Committee refers to its 2006 observation on the application of Convention No. 144 and notes again that the instruments adopted by the Conference at its 95th Session were submitted to the National Assembly on 21 August 2006. It requests the Government to provide the relevant information on the submission to the National Assembly of the Maritime Labour Convention, 2006, adopted by the Conference in February 2006. It further recalls that, under Convention No. 144, effective prior consultations have to be held on the proposals made to the National Assembly when submitting the instruments adopted by the Conference.

## **Pakistan**

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 the 13 sessions held between 1994 and 2006 at its 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions.

## **Papua New Guinea**

In its previous comments, the Committee noted the preparatory work done by the Department of Labour and Industrial Relations for the National Executive Council (NEC) in relation with Convention No. 142 and Recommendation No. 195 (92nd Session). It hopes that the Government will soon announce that the instruments adopted by the Conference at seven sessions between 2000 and 2006 (88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions) have been submitted to the National Parliament.

## **Paraguay**

1. The Committee notes with regret that the Government has not provided information on the submission to the National Congress of the instruments adopted at nine sessions held between 1997 and 2006 (85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

2. The Committee recalls its previous comments and asks the Government to provide information on the content of the document or documents whereby the instruments adopted at the 82nd, 83rd and 84th Sessions of the Conference were submitted to the National Congress, together with the texts of any proposals that may have been made. It also asks

whether the National Congress has reached a decision on the abovementioned instruments and to indicate the representative employers' and workers' organizations to which the information sent to the Director-General has been forwarded.

## **Peru**

The Committee requests the Government to provide information on the submission to the Congress of the Republic of the pending instruments adopted at the 84th Session of the Conference and at seven sessions of the Conference held between 2000 and 2006 (88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## **Russian Federation**

The Committee notes 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 in regard to mandatory and timely submission to the state Duma of the Conventions and Recommendations adopted by the Conference. The Committee asks again the Government to provide all the required information regarding the submission to the state Duma of the instruments adopted by the Conference at the six sessions held between 2001 and 2006 (89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## **Rwanda**

The Committee recalls the information provided by the Government in September 2005 indicating that the reports for the submission to the competent authorities of the Conventions and Recommendations adopted by the Conference from the 80th to the 91st Sessions were with the Council of Ministers, which had to examine them, adopt them and transmit them to the National Assembly. The Committee hopes that the Government will announce that the Conventions, Recommendations and Protocols adopted by the Conference at 13 sessions held between 1993 and 2006 at the 80th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions have in fact been submitted to the National Assembly.

## **Saint Kitts and Nevis**

The Committee refers to its previous comments and 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 ten sessions of the Conference held between 1996 and 2006 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## **Saint Lucia**

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 2006 (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 and 95th 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**

In its 2006 observation, 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 11 sessions held from October 1996 to June 2006.

## **Sao Tome and Principe**

The Committee recalls that the Government has not provided the required information on the submission to the competent authorities of 39 instruments adopted by the Conference between 1990 and 2006 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 90th, 91st, 92nd, 94th and 95th 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**

The Committee notes the information provided by the Government in May 2007 indicating that a file containing detailed analyses of the instruments adopted by the Conference at its 79th, 81st, 82nd, 83rd, 85th and 86th Sessions had been forwarded to the President of the Republic in order to fulfil the obligation of submission. The Committee hopes that the Government will soon be in a position to announce that all the instruments (Conventions, Recommendations, Protocols) adopted by the Conference at the 15 sessions held between 1992 and 2006 have in practice been submitted to the National Assembly.

## **Seychelles**

The Committee asks the Government to indicate whether the instruments adopted by the Conference at the six sessions held between 2001 and 2006 (89th, 90th, 91st, 92nd, 94th and 95th Sessions) have been submitted to the National Assembly.

## **Sierra Leone**

In a communication received in June 2005, the Government requested assistance from the Office, in order to overcome material and technical difficulties that have been reported as the cause for delay in submission. The Office offered its assistance to the Government in a communication sent in July 2007. The Committee hopes that the Government will soon be in a position to report on the submission to Parliament of the instruments adopted by the Conference since October 1976 (Convention No. 146 and Recommendation No. 154, adopted at the 62nd Session) and the instruments adopted between 1977 and 2006.

## **Solomon Islands**

In reply to previous comments, the Committee notes the information provided by the Government representative to the Conference Committee in June 2007 indicating that Cabinet approved, on 17 May 2007, the submission documents prepared with the ILO in 2005. The legislature would then discuss the ratification of seven fundamental Conventions which the Solomon Islands had not yet ratified. The Committee notes that the Office offered once again its assistance to the Government in July 2007. It therefore hopes that the Government will make every effort to comply with the constitutional obligation to submit to the National Legislature the instruments adopted by the Conference between 1984 and 2006.

## **Somalia**

The Committee notes the statement by the Government representative at the Conference Committee in June 2007 expressing its hope that ILO assistance would continue to strengthen the capacity of the Ministry of Labour and Human Resources Development and of the workers' and employers' organizations on submission and reporting. The Office offered once again its assistance to the Government in July 2007. 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 2006.

## **Sudan**

The Committee refers to the information provided by the Government in November 2006 indicating that Convention No. 184 was sent to the Council of Ministers for ratification. It reiterates its hope that the Government will also announce soon that the instruments adopted by the Conference between 1994 and 2006 were submitted to the National Assembly.

## **Swaziland**

1. The Committee notes with interest that the instruments adopted at the 82nd, 86th, 88th, 89th, 90th, 91st and 92nd Sessions of the Conference have been submitted to the House of Assembly on 27 February 2007. It welcomes the progress achieved in this respect and hopes that the Government will continue to provide regularly the information required on the constitutional obligation to submit the instruments adopted by the Conference to the House of Assembly.

2. The Committee refers to its observation on the application of Convention No. 144 and asks the Government to provide information on the submission to the House of Assembly of the instruments adopted by the Conference at its 94th and 95th Sessions, held in 2006.

## Syrian Arab Republic

The Committee notes with interest the information provided by the Government in August 2007 indicating that the National Committee for Consultation and Social Dialogue undertakes, from time to time, the legal re-examination of Conventions that have not yet been submitted for ratification to the competent authorities. The Committee further notes that among such Conventions examined, with a view to ratification, are Conventions Nos 97, 150, 173 and 181. The Government also indicated that the tripartite committee agreed to the proposal for ratification of Convention No. 187. It also reports that under the National Programme for Decent Work, the Ministry of Social Affairs and Labour will ensure the organization of a seminar to which judges, members of the *Majlis al Chaab* (People's Council), governmental representatives, as well as representatives of the social partners, will be invited to discuss the submission of the instruments, adopted by the Conference, to the People's Council. The Committee recalls that 38 instruments adopted by the Conference are still pending for submission to the People's Council. It would appreciate if the Government would report on the solutions and suggestions elaborated at the abovementioned seminar. It again expresses its hope that the Government will soon be able 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, 91st, 92nd, 94th and 95th Sessions have been submitted to the People's Council.

## Tajikistan

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 nine sessions of the Conference held between October 1996 and June 2006 (84th, 85th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions) has not been received.

## The former Yugoslav Republic of Macedonia

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 11 sessions held between 1996 and 2006 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Togo

1. The Committee asks the Government to indicate whether the instruments adopted by the Conference at the five sessions held between 2002 and 2006 at the 90th, 91st, 92nd, 94th and 95th Sessions of the Conference have been submitted to the National Assembly.

2. The Committee refers to its previous comments and asks the Government to also 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.

## Turkmenistan

1. The Committee notes with regret that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference at 14 sessions held by the Conference between 1994 and 2006.

2. 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.

3. 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

In reply to the Committee's previous observations, the Government indicated in a communication received in May 2006 that a Cabinet information paper was prepared on the Conventions and Recommendations adopted by the Conference in 1997, 1998, 2000 and 2001. The Committee asks the Government to provide the required information on the submission to Parliament of the instruments adopted by the Conference at 13 sessions held between 1994 and 2006 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Uzbekistan

1. The Committee notes with regret 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 2006.

2. 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.

3. 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

In its previous observation, the Committee noted the communication provided by the Government through which the Ministry of Labour requested the Ministry of Foreign Affairs, in February 2006, to take the necessary steps for the submission to the National Assembly of the remaining instruments. The Committee refers to its 2007 observation on the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and hopes that the Government will soon be in a position to announce that it has submitted to the National Assembly all the remaining instruments awaiting submission. The Committee recalls that 39 instruments await submission to the National Assembly adopted at the 79th and 81st Sessions (1992 and 1994) and between 1996 and 2006, 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).

## Zambia

The Committee regrets that the Government has not replied to the observations that it has been making since 2003. 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 11 sessions held between 1996 and 2006 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions).

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Austria, Barbados, Belgium, Botswana, Burundi, Costa Rica, Cuba, Cyprus, Dominican Republic, Ecuador, Eritrea, Estonia, Guyana, Honduras, Hungary, India, Jamaica, Jordan, Kuwait, Lesotho, Mali, Malta, Mauritania, Mexico, Republic of Moldova, Nicaragua, Oman, Panama, Qatar, Samoa, Serbia, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Timor-Leste, Trinidad and Tobago, Ukraine, United States, Uruguay, Vanuatu, Yemen, Zimbabwe.*



***Appendices***

**Appendix I. Table of reports received on ratified Conventions as of 7 December 2007  
(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 7 December 2007**  
(articles 22 and 35 of the Constitution)

*Note: First reports are indicated in parentheses.*

<b>Afghanistan</b>	<b>5 reports requested</b>
· 3 reports received: Conventions Nos. 100, 111, 137	
· 2 reports not received: Conventions Nos. 13, 139	
<b>Albania</b>	<b>24 reports requested</b>
· 19 reports received: Conventions Nos. 16, (81), 87, (97), 98, 100, 111, (131), (135), 138, (141), 144, (155), (174), (175), (176), 181, 182, (183)	
· 5 reports not received: Conventions Nos. 29, 105, (171), (173), 178	
<b>Algeria</b>	<b>17 reports requested</b>
· All reports received: Conventions Nos. 17, 19, 24, 32, 42, 44, 81, 87, 97, 98, 100, 108, 111, 122, 138, 144, 182	
<b>Angola</b>	<b>13 reports requested</b>
· 11 reports received: Conventions Nos. 12, 17, 18, 19, 27, 87, 98, 100, 105, 111, 138	
· 2 reports not received: Conventions Nos. 29, 182	
<b>Antigua and Barbuda</b>	<b>22 reports requested</b>
· No reports received: Conventions Nos. 12, 14, 17, 19, 87, 94, 98, (100), 111, (122), (131), (135), 138, (142), (144), (150), (151), (154), (155), (158), (161), (182)	
<b>Argentina</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 12, 17, 19, 27, 32, 42, 87, 98, 100, 111, 144	
<b>Armenia</b>	<b>22 reports requested</b>
· 16 reports received: Conventions Nos. (17), (18), (29), (81), (94), (95), (98), (100), (105), 122, (131), (135), (144), (151), (154), (174)	
· 6 reports not received: Conventions Nos. (14), (111), (150), (160), (173), (176)	
<b>Australia</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 12, 19, 27, 42, 87, 98, 100, 111, 122, 137, 144	
<i>Norfolk Island</i>	<b>8 reports requested</b>
· All reports received: Conventions Nos. 12, 19, 27, 42, 87, 98, 100, 122	
<b>Austria</b>	<b>15 reports requested</b>
· All reports received: Conventions Nos. 12, 17, 19, 24, 25, 27, 42, 87, 98, 100, 102, 111, 122, 128, 144	
<b>Azerbaijan</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 27, 32, 87, 98, 100, 105, 111, 119, 122, 135, 144	
<b>Bahamas</b>	<b>17 reports requested</b>
· 14 reports received: Conventions Nos. 17, 19, 22, 42, 81, 87, 97, 98, 100, 105, 111, 138, 144, 182	
· 3 reports not received: Conventions Nos. 12, 26, 29	
<b>Bahrain</b>	<b>3 reports requested</b>
· All reports received: Conventions Nos. 29, 111, 182	
<b>Bangladesh</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos. 18, 19, 27, 32, 87, 98, 100, 111, 118, 144	

<b>Barbados</b>	<b>24 reports requested</b>
· No reports received: Conventions Nos. 11, 12, 17, 19, 26, 29, 42, 81, 87, 90, 94, 95, 97, 98, 100, 102, 105, 111, 118, 122, 128, 138, 144, 147	
<b>Belarus</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos. 27, 32, 87, 98, 100, 111, 122, 144	
<b>Belgium</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 27, 32, 87, 97, 98, 100, 102, 111, 122, 144, 180	
<b>Belize</b>	<b>34 reports requested</b>
· 17 reports received: Conventions Nos. 11, 12, 19, (23), 26, 29, 42, (55), 87, 88, (92), 99, 105, (133), (134), (147), (183)	
· 17 reports not received: Conventions Nos. 81, 94, 95, 97, 98, 100, 111, 115, 138, 141, 144, 150, 151, 154, 155, 156, 182	
<b>Benin</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos. 18, 87, 98, 100, 111, 143, 144	
<b>Bolivia</b>	<b>29 reports requested</b>
· No reports received: Conventions Nos. 1, 19, (29), 30, 77, 78, 81, 87, 90, 95, 96, 98, 100, 102, 105, 111, 118, 121, 122, 123, 124, 128, 129, 130, 131, 136, 138, 156, 182	
<b>Bosnia and Herzegovina</b>	<b>49 reports requested</b>
· All reports received: Conventions Nos. 9, 11, 12, 13, 16, 19, 22, 23, 24, 25, 27, 29, 32, 53, 56, 69, 73, 74, 87, 90, 91, 92, 97, 98, 100, 102, (105), 111, 113, 114, 119, 121, 122, 126, 129, 131, 135, 136, 138, 139, 142, 143, 148, 155, 156, 159, 161, 162, (182)	
<b>Botswana</b>	<b>12 reports requested</b>
· 9 reports received: Conventions Nos. 29, 87, 95, 98, 100, 105, 144, 173, 176	
· 3 reports not received: Conventions Nos. 19, 111, 182	
<b>Brazil</b>	<b>15 reports requested</b>
· 12 reports received: Conventions Nos. 12, 19, 42, 97, 98, 100, 111, 115, 118, 137, 144, 152	
· 3 reports not received: Conventions Nos. 122, 160, 168	
<b>Bulgaria</b>	<b>17 reports requested</b>
· All reports received: Conventions Nos. 12, 17, 19, 24, 25, 27, 32, 42, 44, 87, 98, 100, 111, 144, (164), (178), (181)	
<b>Burkina Faso</b>	<b>22 reports requested</b>
· All reports received: Conventions Nos. 11, 17, 18, 19, 29, 87, 97, 98, 100, 105, 111, 129, 131, 138, 141, 143, 144, 159, 161, 170, 173, 182	
<b>Burundi</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 12, 17, 19, 27, 42, 87, 94, 98, 100, 111, 144	
<b>Cambodia</b>	<b>12 reports requested</b>
· 2 reports received: Conventions Nos. 87, 98	
· 10 reports not received: Conventions Nos. 4, 6, 13, 29, 100, 105, 111, 122, 138, 150	
<b>Cameroon</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 19, 87, 97, 98, 100, 111, 122, 143, 158	
<b>Canada</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos. 27, 32, 87, 100, 111, 122	
<b>Cape Verde</b>	<b>11 reports requested</b>
· No reports received: Conventions Nos. 17, 19, 29, 81, 87, 98, 100, 105, 111, 118, 182	

<b>Central African Republic</b>	<b>13 reports requested</b>
· 12 reports received: Conventions Nos. 17, 18, 19, 87, 94, 95, 98, 100, 111, 118, 138, 182	
· 1 report not received: Convention No. 6	
<b>Chad</b>	<b>7 reports requested</b>
· No reports received: Conventions Nos. 87, 98, 100, 111, (138), 144, 182	
<b>Chile</b>	<b>17 reports requested</b>
· All reports received: Conventions Nos. 12, 19, 24, 25, 27, 32, 35, 36, 37, 38, 87, 98, 100, 111, 121, 122, 144	
<b>China</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos. 19, 27, 32, 100, 122, 144	
<b>Hong Kong Special Administrative Region</b>	<b>10 reports requested</b>
· 8 reports received: Conventions Nos. 12, 17, 19, 32, 42, 87, 122, 144	
· 2 reports not received: Conventions Nos. 97, 98	
<b>Macau Special Administrative Region</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos. 17, 18, 19, 27, 87, 98, 100, 111, 122, 144	
<b>Colombia</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 12, 17, 18, 19, 24, 25, 87, 98, 100, 111, 129, 144, (182)	
<b>Comoros</b>	<b>25 reports requested</b>
· 16 reports received: Conventions Nos. 17, 19, 29, 42, 52, 77, 78, 81, 98, 99, 100, 105, (111), 122, (138), (182)	
· 9 reports not received: Conventions Nos. 5, 6, 10, 11, 12, 26, 87, 89, 106	
<b>Congo</b>	<b>18 reports requested</b>
· No reports received: Conventions Nos. 6, 11, 13, 26, 29, 81, 87, 95, 98, 100, 105, 111, 119, 138, 144, 149, 152, 182	
<b>Costa Rica</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 87, 98, 100, 102, 111, 122, 130, 137, 144	
<b>Côte d'Ivoire</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 18, 19, 87, 98, 100, 111, (138), 144, 159	
<b>Croatia</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos. 12, 19, 24, 25, 27, 32, 87, 98, 100, 102, 111, 121, 122, (179)	
<b>Cuba</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 12, 17, 19, 27, 42, 87, 97, 98, 100, 111, 122, 137, 152	
<b>Cyprus</b>	<b>16 reports requested</b>
· 12 reports received: Conventions Nos. 87, 88, 98, 100, 102, 105, 111, 122, 138, 144, 152, 182	
· 4 reports not received: Conventions Nos. 97, 114, 143, (183)	
<b>Czech Republic</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos. 27, 87, 98, 100, 111, 122, 144	
<b>Democratic Republic of the Congo</b>	<b>23 reports requested</b>
· No reports received: Conventions Nos. 11, 12, 19, 26, 27, 62, 87, 89, 94, 98, 100, 102, 105, 111, 117, 118, 119, 120, 121, 138, 144, 158, 182	
<b>Denmark</b>	<b>10 reports requested</b>
· 8 reports received: Conventions Nos. 81, 87, 94, 98, 100, 111, 122, 144	
· 2 reports not received: Conventions Nos. 27, 152	

<i>Faeroe Islands</i>	<b>12 reports requested</b>
· No reports received: Conventions Nos. 5, 6, 11, 12, 18, 19, 27, 29, 87, 98, 105, 126	
<i>Greenland</i>	<b>7 reports requested</b>
· All reports received: Conventions Nos. 11, 19, 29, 87, 105, 122, 126	
<b>Djibouti</b>	<b>42 reports requested</b>
· 25 reports received: Conventions Nos. 6, 9, 11, 12, 13, 14, 16, 17, 18, 26, 29, 44, 45, 52, 77, 78, 81, 89, 94, 95, 98, 99, 105, 115, 120	
· 17 reports not received: Conventions Nos. 19, 24, 37, 38, 87, 88, 96, 100, 101, (111), 122, 124, 125, 126, (138), (144), (182)	
<b>Dominica</b>	<b>23 reports requested</b>
· 14 reports received: Conventions Nos. 11, 16, 26, 29, 81, 87, 94, 95, 97, 98, 100, 105, 108, 111	
· 9 reports not received: Conventions Nos. 12, 19, (135), 138, (144), (147), (150), (169), (182)	
<b>Dominican Republic</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos. 19, 87, 98, 100, 111, 122, 144	
<b>Ecuador</b>	<b>15 reports requested</b>
· 14 reports received: Conventions Nos. 87, 88, 97, 98, 100, 102, 111, 118, 121, 122, 128, 144, 148, 152	
· 1 report not received: Convention No. 130	
<b>Egypt</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 17, 18, 19, 87, 98, 100, 111, 118, 137, 144, 152	
<b>El Salvador</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos. 12, 100, 111, 122, 144	
<b>Equatorial Guinea</b>	<b>10 reports requested</b>
· No reports received: Conventions Nos. 29, (68), 87, (92), 98, 100, 105, 111, 138, 182	
<b>Eritrea</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 138	
<b>Estonia</b>	<b>19 reports requested</b>
· 10 reports received: Conventions Nos. 5, 6, 10, 11, 29, 98, 105, (129), (147), 182	
· 9 reports not received: Conventions Nos. 12, 19, 27, (81), 87, 100, (111), 122, 144	
<b>Ethiopia</b>	<b>7 reports requested</b>
· 6 reports received: Conventions Nos. 11, 87, 98, 100, 105, 111	
· 1 report not received: Convention No. 156	
<b>Fiji</b>	<b>9 reports requested</b>
· 8 reports received: Conventions Nos. 12, 19, 87, 98, 100, 111, 144, (159)	
· 1 report not received: Convention No. 169	
<b>Finland</b>	<b>16 reports requested</b>
· All reports received: Conventions Nos. 12, 19, 27, 87, 98, 100, 111, 118, 121, 122, 128, 130, 137, 144, 152, 168	
<b>France</b>	<b>26 reports requested</b>
· 17 reports received: Conventions Nos. 81, 94, 100, 102, 111, 113, 114, 125, 126, 144, 156, 158, (163), (164), (166), (178), (179)	
· 9 reports not received: Conventions Nos. 27, 87, 88, 96, 97, 98, 122, 137, 152	
<i>French Guiana</i>	<b>29 reports requested</b>
· 5 reports received: Conventions Nos. 112, 113, 114, 125, 126	
· 24 reports not received: Conventions Nos. 5, 6, 12, 17, 19, 24, 27, 29, 32, 35, 36, 37, 38, 42, 81, 87, 95, 98, 100, 105, 111, 123, 124, 144	

<i>French Polynesia</i>	<b>15 reports requested</b>
· All reports received: Conventions Nos. 12, 17, 19, 24, 37, 38, 42, 44, 87, 98, 100, 111, 115, 122, 144	
<i>French Southern and Antarctic Territories</i>	<b>3 reports requested</b>
· 1 report received: Convention No. 87	
· 2 reports not received: Conventions Nos. 98, 111	
<i>Guadeloupe</i>	<b>18 reports requested</b>
· 5 reports received: Conventions Nos. 112, 113, 114, 125, 126	
· 13 reports not received: Conventions Nos. 12, 17, 19, 24, 27, 32, 42, 87, 98, 100, 111, 115, 144	
<i>Martinique</i>	<b>33 reports requested</b>
· 5 reports received: Conventions Nos. 112, 113, 114, 125, 126	
· 28 reports not received: Conventions Nos. 5, 6, 10, 12, 17, 19, 24, 27, 29, 32, 35, 36, 37, 38, 42, 81, 87, 94, 95, 98, 100, 105, 111, 123, 124, 129, 131, 144	
<i>New Caledonia</i>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 12, 17, 19, 24, 42, 44, 87, 98, 100, 111, 122, 127, 144	
<i>Réunion</i>	<b>21 reports requested</b>
· 5 reports received: Conventions Nos. 112, 113, 114, 125, 126	
· 16 reports not received: Conventions Nos. 12, 17, 19, 24, 27, 32, 35, 36, 37, 38, 42, 87, 98, 100, 111, 144	
<i>St. Pierre and Miquelon</i>	<b>13 reports requested</b>
· 2 reports received: Conventions Nos. 125, 126	
· 11 reports not received: Conventions Nos. 12, 17, 19, 24, 42, 87, 98, 100, 111, 122, 144	
<b>Gabon</b>	<b>12 reports requested</b>
· All reports received: Conventions Nos. 3, 12, 19, 29, 81, 87, 98, 100, 105, 111, 144, 158	
<b>Gambia</b>	<b>8 reports requested</b>
· No reports received: Conventions Nos. (29), 87, 98, 100, (105), 111, (138), (182)	
<b>Georgia</b>	<b>6 reports requested</b>
· 5 reports received: Conventions Nos. 87, 98, 100, 111, 122	
· 1 report not received: Convention No. (163)	
<b>Germany</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 27, 87, 97, 98, 100, 111, 122, 144, 152	
<b>Ghana</b>	<b>11 reports requested</b>
· 9 reports received: Conventions Nos. 19, 87, 96, 100, 111, 115, 119, (147), 148	
· 2 reports not received: Conventions Nos. 98, 105	
<b>Greece</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 27, 87, 95, 98, 100, 102, 111, 122, 124, 144, 156, 180, 182	
<b>Grenada</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 11, 12, 19, 26, 87, 94, 95, 97, 98, 99, 100, 111, 144	
<b>Guatemala</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 19, 87, 97, 98, 100, 111, 118, 122, 144	
<b>Guinea</b>	<b>25 reports requested</b>
· No reports received: Conventions Nos. 11, 26, 45, 87, 90, 94, 95, 98, 99, 100, 111, 113, 115, 118, 119, 121, 122, 134, 136, 143, 144, 148, 150, 152, 156	
<b>Guinea-Bissau</b>	<b>8 reports requested</b>
· No reports received: Conventions Nos. 12, 17, 18, 19, 27, 98, 100, 111	

<b>Guyana</b>	<b>10 reports requested</b>
· 2 reports received: Conventions Nos. 87, 98	
· 8 reports not received: Conventions Nos. 12, 19, 42, 97, 100, 111, 137, 144	
<b>Haiti</b>	<b>21 reports requested</b>
· 8 reports received: Conventions Nos. 5, 29, 45, 77, 78, 90, 100, 111	
· 13 reports not received: Conventions Nos. 1, 12, 17, 19, 24, 25, 30, 42, 81, 87, 98, 105, 107	
<b>Honduras</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 27, 32, 42, 87, 98, 100, 108, 111, 122	
<b>Hungary</b>	<b>13 reports requested</b>
· 12 reports received: Conventions Nos. 12, 17, 19, 27, 42, 87, 98, 100, 111, 122, 144, (147)	
· 1 report not received: Convention No. 24	
<b>Iceland</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos. 87, 98, 100, 102, 111, 122, 144	
<b>India</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 19, 27, 32, 42, 100, 105, (108), 111, 118, 122, 144	
<b>Indonesia</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos. 19, 27, (81), 87, 98, 100, 111, 138, 144, 182	
<b>Islamic Republic of Iran</b>	<b>8 reports requested</b>
· 6 reports received: Conventions Nos. 29, 100, 105, 111, 122, 182	
· 2 reports not received: Conventions Nos. 19, 95	
<b>Iraq</b>	<b>55 reports requested</b>
· No reports received: Conventions Nos. 1, 8, 11, 13, 14, 16, 17, 19, 22, 23, 27, 29, 30, 42, 77, 78, 81, 88, 89, 92, 94, 95, 98, 100, 105, 106, 107, 108, 111, 115, 118, 119, 120, 122, 131, 132, 135, 136, 137, 138, 139, 140, 142, 144, 145, 146, 147, 148, 149, 150, 152, 153, 167, (172), (182)	
<b>Ireland</b>	<b>10 reports requested</b>
· 2 reports received: Conventions Nos. 100, 111	
· 8 reports not received: Conventions Nos. 27, 32, 87, 98, 122, 144, 178, 179	
<b>Israel</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos. 19, 87, 97, 98, 100, 102, 111, 118, 122, (182)	
<b>Italy</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 27, 87, 97, 98, 100, 111, 122, 136, 137, 139, 143, 144, 152	
<b>Jamaica</b>	<b>12 reports requested</b>
· 6 reports received: Conventions Nos. 11, 19, 97, 100, 111, 144	
· 6 reports not received: Conventions Nos. 29, 87, 94, 98, 122, (152)	
<b>Japan</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 19, 27, 87, 88, 98, 100, 102, 121, 122, 144, (162)	
<b>Jordan</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 29, 81, 98, 100, 105, 111, 118, 122, 124, 138, 144, (147), 182	
<b>Kazakhstan</b>	<b>12 reports requested</b>
· 9 reports received: Conventions Nos. 81, 87, 98, 111, 129, 135, 138, 148, 182	
· 3 reports not received: Conventions Nos. 29, 100, 105	

<b>Kenya</b>	<b>15 reports requested</b>
· 12 reports received: Conventions Nos. 17, 29, 32, 81, 97, 99, 105, 129, 131, 137, 138, 143	
· 3 reports not received: Conventions Nos. 27, 94, 182	
<b>Kiribati</b>	<b>4 reports requested</b>
· No reports received: Conventions Nos. 29, 87, 98, 105	
<b>Republic of Korea</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos. 19, 81, 100, 111, 122, 131, 138, 144, 156, 182	
<b>Kuwait</b>	<b>6 reports requested</b>
· 5 reports received: Conventions Nos. 29, 81, 105, 138, 182	
· 1 report not received: Convention No. 111	
<b>Kyrgyzstan</b>	<b>47 reports requested</b>
· 7 reports received: Conventions Nos. 29, (105), 138, (150), (154), 160, (182)	
· 40 reports not received: Conventions Nos. 11, 14, 16, (17), 23, 27, 32, 45, 47, 52, 69, 73, 77, 78, 79, 81, 87, 90, 92, 95, 98, 100, 103, 106, 108, (111), 113, 115, 119, 120, 122, 124, 126, (133), 134, 142, 147, 148, 149, (184)	
<b>Lao People's Democratic Republic</b>	<b>4 reports requested</b>
· No reports received: Conventions Nos. 6, 29, (138), (182)	
<b>Latvia</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 6, 81, 105, 129, 131, (133), 158, 173, (180)	
<b>Lebanon</b>	<b>16 reports requested</b>
· All reports received: Conventions Nos. 29, 59, 77, 78, 81, 90, 95, 105, 131, 133, 138, (148), (150), 152, (174), 182	
<b>Lesotho</b>	<b>12 reports requested</b>
· No reports received: Conventions Nos. 11, 19, 26, 29, 81, 100, 105, 111, 138, 150, 158, 182	
<b>Liberia</b>	<b>21 reports requested</b>
· No reports received: Conventions Nos. 22, 23, 29, 53, 55, 58, (81), 87, 92, 98, 105, 108, 111, 112, 113, 114, (133), (144), 147, (150), (182)	
<b>Libyan Arab Jamahiriya</b>	<b>8 reports requested</b>
· 4 reports received: Conventions Nos. 29, 95, 96, 182	
· 4 reports not received: Conventions Nos. 81, 105, 131, 138	
<b>Lithuania</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos. 27, 29, 79, 81, 90, 105, 131, 138, 173, 182	
<b>Luxembourg</b>	<b>15 reports requested</b>
· All reports received: Conventions Nos. 26, 27, 29, 77, 78, 79, 81, 90, 105, (133), 138, (146), (178), (180), 182	
<b>Madagascar</b>	<b>12 reports requested</b>
· All reports received: Conventions Nos. 6, 26, 29, 81, 95, 97, 100, 124, 129, 138, 173, 182	
<b>Malawi</b>	<b>18 reports requested</b>
· 9 reports received: Conventions Nos. 11, 12, 19, 87, 98, 100, 111, 144, 158	
· 9 reports not received: Conventions Nos. 26, 29, 81, 97, 99, 105, 129, 138, 182	
<b>Malaysia</b>	<b>6 reports requested</b>
· No reports received: Conventions Nos. 29, 81, 95, 123, 138, 182	
<b>Peninsular Malaysia</b>	<b>1 report requested</b>
· All reports received: Convention No. 19	

<b>Sabah</b>	<b>2 reports requested</b>
· No reports received: Conventions Nos. 94, 97	
<b>Sarawak</b>	<b>2 reports requested</b>
· No reports received: Conventions Nos. 19, 94	
<b>Mali</b>	<b>10 reports requested</b>
· 5 reports received: Conventions Nos. 26, 81, 95, 138, 182	
· 5 reports not received: Conventions Nos. 6, 29, 100, 105, 111	
<b>Malta</b>	<b>24 reports requested</b>
· 18 reports received: Conventions Nos. 11, 12, 19, 22, 29, 42, 53, 81, 87, 98, 100, 105, 111, 129, 138, 141, 180, 182	
· 6 reports not received: Conventions Nos. 32, 77, 78, 95, 124, 131	
<b>Mauritania</b>	<b>10 reports requested</b>
· 2 reports received: Conventions Nos. 29, 81	
· 8 reports not received: Conventions Nos. 26, 33, 90, 94, 95, 105, 138, 182	
<b>Mauritius</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 26, 29, 32, 81, (87), 94, 95, 97, 99, 105, 137, 138, 182	
<b>Mexico</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos. 22, 27, 29, 90, 95, 102, 105, 123, 124, 131, 152, 163, 173, 182	
<b>Republic of Moldova</b>	<b>12 reports requested</b>
· All reports received: Conventions Nos. 29, 81, (92), 95, (97), 98, 105, 129, 131, (133), 138, 182	
<b>Mongolia</b>	<b>9 reports requested</b>
· No reports received: Conventions Nos. (29), 98, 100, (105), 111, 122, 123, 138, 182	
<b>Morocco</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 26, 27, 29, 81, 94, 99, 105, 129, 138, 179, 182	
<b>Mozambique</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos. 29, 81, 105, 138, 182	
<b>Myanmar</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos. 6, 11, 19, 26, 27, 29, 42, 87	
<b>Namibia</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos. 29, 105, 138, 158, 182	
<b>Nepal</b>	<b>4 reports requested</b>
· All reports received: Conventions Nos. 29, 131, 138, 182	
<b>Netherlands</b>	<b>18 reports requested</b>
· All reports received: Conventions Nos. 27, 29, 81, 88, 90, 94, 95, 97, 105, 124, 128, 129, 131, 138, 152, 159, 181, 182	
<i>Aruba</i>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 29, 81, 90, 94, 95, 105, 118, 131, 138	
<i>Netherlands Antilles</i>	<b>15 reports requested</b>
· 7 reports received: Conventions Nos. 11, 12, 17, 25, 42, 118, 122	
· 8 reports not received: Conventions Nos. 10, 29, 33, 81, 90, 94, 95, 105	
<b>New Zealand</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos. 10, 26, 29, 32, 59, 81, 97, 99, 105, 182	

<i>Tokelau</i>	<b>2 reports requested</b>
· All reports received: Conventions Nos. 29, 105	
<b>Nicaragua</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos. 6, 27, 29, 77, 78, 95, 105, 131, 137, 138, 182	
<b>Niger</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 6, 29, 81, 95, 105, 119, 131, 138, 182	
<b>Nigeria</b>	<b>16 reports requested</b>
· No reports received: Conventions Nos. 8, 26, 29, 32, 81, 94, 95, 97, 105, 111, 123, (137), 138, (178), (179), 182	
<b>Norway</b>	<b>17 reports requested</b>
· 16 reports received: Conventions Nos. 8, 26, 27, 29, 81, 90, 95, 97, 105, 129, 137, 138, 143, 152, 168, 182	
· 1 report not received: Convention No. 94	
<b>Oman</b>	<b>4 reports requested</b>
· All reports received: Conventions Nos. 29, (105), (138), 182	
<b>Pakistan</b>	<b>10 reports requested</b>
· 7 reports received: Conventions Nos. 29, 59, 81, 90, 105, 118, 182	
· 3 reports not received: Conventions Nos. 11, 27, 32	
<b>Panama</b>	<b>17 reports requested</b>
· 15 reports received: Conventions Nos. 26, 27, 29, 32, 77, 78, 87, 95, 100, 105, 111, 122, 124, 138, 182	
· 2 reports not received: Conventions Nos. 81, 94	
<b>Papua New Guinea</b>	<b>17 reports requested</b>
· 10 reports received: Conventions Nos. 11, 12, 19, 42, 87, 98, 100, 111, 122, 158	
· 7 reports not received: Conventions Nos. 26, 27, 29, 99, 105, 138, 182	
<b>Paraguay</b>	<b>24 reports requested</b>
· 20 reports received: Conventions Nos. 11, 14, 29, 59, 77, 78, 79, 81, 90, 95, 100, 101, 105, 106, 117, 119, 120, 124, (138), 182	
· 4 reports not received: Conventions Nos. 26, 99, 123, 169	
<b>Peru</b>	<b>17 reports requested</b>
· 2 reports received: Conventions Nos. 44, 102	
· 15 reports not received: Conventions Nos. 26, 27, 29, 59, 71, 77, 78, 79, 81, 90, 99, 105, 138, 152, 182	
<b>Philippines</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 17, (29), 77, 90, 94, 95, 99, 100, 105, 111, 138, 179, 182	
<b>Poland</b>	<b>17 reports requested</b>
· All reports received: Conventions Nos. 27, 29, 77, 78, 79, 81, 90, 95, 98, 99, 105, 124, 129, 137, 138, (170), 182	
<b>Portugal</b>	<b>18 reports requested</b>
· All reports received: Conventions Nos. 6, 27, 29, 77, 78, 81, 95, 97, 102, 105, 124, 129, 131, 137, 138, 143, 147, 182	
<b>Qatar</b>	<b>3 reports requested</b>
· All reports received: Conventions Nos. 29, 81, 182	
<b>Romania</b>	<b>13 reports requested</b>
· 12 reports received: Conventions Nos. 6, 27, 29, 81, 95, 105, 111, 129, 131, 137, 138, 182	
· 1 report not received: Convention No. 87	

<b>Russian Federation</b>	<b>24 reports requested</b>
· All reports received: Conventions Nos. 11, 27, 29, 77, 78, 79, 81, 87, 90, 95, 98, 100, 105, 111, 113, 122, 124, 126, (137), 138, 150, (152), 156, 182	
<b>Rwanda</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos. 26, 29, 81, 94, 105, 123, 138, 182	
<b>Saint Kitts and Nevis</b>	<b>9 reports requested</b>
· 1 report received: Convention No. (100) · 8 reports not received: Conventions Nos. 29, (87), (98), 105, 111, (138), 144, 182	
<b>Saint Lucia</b>	<b>24 reports requested</b>
· 22 reports received: Conventions Nos. 5, 7, 8, 11, 12, 14, 16, 17, 19, 26, 29, 87, 94, 95, 97, 98, 100, 101, 105, 111, (154), (158) · 2 reports not received: Conventions Nos. 108, (182)	
<b>Saint Vincent and the Grenadines</b>	<b>10 reports requested</b>
· 6 reports received: Conventions Nos. 19, 26, 81, 94, 95, 100 · 4 reports not received: Conventions Nos. 29, 105, 111, 182	
<b>San Marino</b>	<b>21 reports requested</b>
· 4 reports received: Conventions Nos. 29, 87, 105, 160 · 17 reports not received: Conventions Nos. 88, 98, 100, 111, 119, 138, 142, 143, 144, 148, 150, 151, 154, 156, 159, 161, 182	
<b>Sao Tome and Principe</b>	<b>21 reports requested</b>
· 14 reports received: Conventions Nos. 17, 18, 19, (29), 81, 87, 88, 98, 100, (105), 106, 111, 144, 159 · 7 reports not received: Conventions Nos. (135), (138), (151), (154), (155), (182), (184)	
<b>Saudi Arabia</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos. 29, 81, 90, 105, 123, 182	
<b>Senegal</b>	<b>14 reports requested</b>
· No reports received: Conventions Nos. 6, 10, 13, 26, 29, 81, 95, 99, 102, 105, 120, 121, 138, 182	
<b>Serbia</b>	<b>30 reports requested</b>
· All reports received: Conventions Nos. (8), 9, 11, 12, (16), (22), (23), (27), 29, 32, (53), (56), (69), (73), (74), 81, 90, 92, 97, 105, (113), (114), 122, 126, 129, 131, 138, 143, (144), 182	
<b>Seychelles</b>	<b>15 reports requested</b>
· No reports received: Conventions Nos. 22, 26, 29, (73), (81), 99, 105, 138, (144), (147), (152), (155), (161), (180), 182	
<b>Sierra Leone</b>	<b>19 reports requested</b>
· No reports received: Conventions Nos. 8, 17, 19, 26, 29, 32, 59, 81, 87, 94, 95, 98, 99, 100, 105, 111, 125, 126, 144	
<b>Singapore</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos. 29, 32, 81, 94, (138), 182	
<b>Slovakia</b>	<b>18 reports requested</b>
· 16 reports received: Conventions Nos. 26, 29, 34, 77, 78, 88, 90, 95, 99, 105, 123, 124, 138, 144, 156, 173 · 2 reports not received: Conventions Nos. 27, 182	
<b>Slovenia</b>	<b>13 reports requested</b>
· No reports received: Conventions Nos. 27, 29, 32, 81, 90, 97, 105, 129, 131, 138, 143, 173, 182	
<b>Solomon Islands</b>	<b>10 reports requested</b>
· No reports received: Conventions Nos. 11, 12, 19, 26, 29, 42, 81, 84, 94, 95	

<b>Somalia</b>	<b>8 reports requested</b>
· No reports received: Conventions Nos. 17, 19, 29, 84, 94, 95, 105, 111	
<b>South Africa</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos. 26, 29, 100, 105, 111, 138, 182	
<b>Spain</b>	<b>22 reports requested</b>
· All reports received: Conventions Nos. 27, 29, 68, 77, 78, 79, 81, 90, 94, 95, 97, 105, 123, 124, 129, 131, 137, 138, 152, 157, 173, 182	
<b>Sri Lanka</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos. 29, 81, 90, 95, 105, 131, 138, 182	
<b>Sudan</b>	<b>9 reports requested</b>
· No reports received: Conventions Nos. 19, 26, 29, 81, 95, 105, 122, 138, 182	
<b>Suriname</b>	<b>6 reports requested</b>
· All reports received: Conventions Nos. 27, 29, 81, 94, 95, 105	
<b>Swaziland</b>	<b>19 reports requested</b>
· 18 reports received: Conventions Nos. 11, 12, 19, 29, 81, 87, 90, 94, 95, 98, 100, 105, 111, 123, 131, 138, 144, 182	
· 1 report not received: Convention No. 160	
<b>Sweden</b>	<b>12 reports requested</b>
· All reports received: Conventions Nos. 27, 29, 81, 105, 118, 129, 137, 138, 143, 152, 158, 182	
<b>Switzerland</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos. 6, 26, 27, 29, 81, 105, 138, 173, 182	
<b>Syrian Arab Republic</b>	<b>15 reports requested</b>
· All reports received: Conventions Nos. 11, 17, 18, 19, 29, 81, 94, 95, 105, 123, 124, 129, 131, 138, 182	
<b>Tajikistan</b>	<b>20 reports requested</b>
· No reports received: Conventions Nos. 11, 27, 29, 32, 77, 78, 79, 87, 90, 95, 98, 100, 105, 111, 113, 122, 124, 126, 138, (182)	
<b>United Republic of Tanzania</b>	<b>17 reports requested</b>
· 15 reports received: Conventions Nos. 11, 12, 17, 19, 29, 59, 95, 98, 100, 111, 131, 137, 138, 152, 182	
· 2 reports not received: Conventions Nos. 94, 105	
<b>Tanganyika</b>	<b>2 reports requested</b>
· All reports received: Conventions Nos. 45, 81	
<b>Zanzibar</b>	<b>1 report requested</b>
· No reports received: Convention No. 97	
<b>Thailand</b>	<b>8 reports requested</b>
· 7 reports received: Conventions Nos. 19, 29, 88, 100, 105, 122, (138)	
· 1 report not received: Convention No. 182	
<b>The former Yugoslav Republic of Macedonia</b>	<b>61 reports requested</b>
· 6 reports received: Conventions Nos. 29, 87, 98, 100, (105), 111	
· 55 reports not received: Conventions Nos. 8, 9, 11, 12, 13, 14, 16, 19, 22, 23, 24, 25, 27, 32, 45, 53, 56, 69, 73, 74, 81, 88, 89, 90, 91, 92, 97, 102, 103, 106, 113, 114, 119, 121, 122, 126, 129, 131, 132, 135, 136, 138, 139, 140, 142, 143, (144), 148, 155, 156, 158, 159, 161, 162, (182)	
<b>Togo</b>	<b>15 reports requested</b>
· No reports received: Conventions Nos. 6, 11, 26, 29, 85, 87, 95, 98, 100, 105, 111, 138, 143, 144, 182	

<b>Trinidad and Tobago</b>	<b>14 reports requested</b>
<hr/>	
· All reports received: Conventions Nos. 19, 29, 85, 87, 97, 98, 100, 105, 111, 125, (138), 144, 147, 182	
<b>Tunisia</b>	<b>12 reports requested</b>
<hr/>	
· All reports received: Conventions Nos. 26, 29, 77, 81, 90, 95, 99, 105, 124, 127, 138, 182	
<b>Turkey</b>	<b>23 reports requested</b>
<hr/>	
· All reports received: Conventions Nos. 26, 29, (53), (55), 77, 81, 94, 95, 99, 105, (108), 115, 123, (134), 138, (146), (152), (153), (155), (161), (164), (166), 182	
<b>Turkmenistan</b>	<b>6 reports requested</b>
<hr/>	
· No reports received: Conventions Nos. (29), (87), (98), (100), (105), (111)	
<b>Uganda</b>	<b>24 reports requested</b>
<hr/>	
· No reports received: Conventions Nos. 11, 12, 17, 19, 26, 29, 45, 81, (87), 94, 95, 98, (100), 105, (111), 122, 123, 124, (138), 143, 144, 158, 162, 182	
<b>Ukraine</b>	<b>18 reports requested</b>
<hr/>	
· 16 reports received: Conventions Nos. 11, 27, 29, 32, 77, 78, 79, 81, 90, 95, 105, 119, 124, 129, 138, 182	
· 2 reports not received: Conventions Nos. 108, 147	
<b>United Arab Emirates</b>	<b>5 reports requested</b>
<hr/>	
· All reports received: Conventions Nos. 29, 81, 105, 138, 182	
<b>United Kingdom</b>	<b>8 reports requested</b>
<hr/>	
· All reports received: Conventions Nos. 29, 32, 81, 97, 105, 124, 138, 182	
<i>Anguilla</i>	<b>20 reports requested</b>
<hr/>	
· No reports received: Conventions Nos. 8, 11, 12, 17, 19, 22, 23, 26, 29, 42, 58, 59, 85, 87, 94, 97, 98, 99, 105, 108	
<i>Bermuda</i>	<b>5 reports requested</b>
<hr/>	
· No reports received: Conventions Nos. 10, 29, 59, 94, 105	
<i>British Virgin Islands</i>	<b>7 reports requested</b>
<hr/>	
· No reports received: Conventions Nos. 10, 26, 29, 59, 94, 97, 105	
<i>Falkland Islands (Malvinas)</i>	<b>5 reports requested</b>
<hr/>	
· No reports received: Conventions Nos. 10, 29, 32, 59, 105	
<i>Gibraltar</i>	<b>6 reports requested</b>
<hr/>	
· No reports received: Conventions Nos. 29, 59, 81, 87, 100, 105	
<i>Guernsey</i>	<b>8 reports requested</b>
<hr/>	
· 3 reports received: Conventions Nos. 5, 97, 182	
· 5 reports not received: Conventions Nos. 10, 29, 32, 81, 105	
<i>Isle of Man</i>	<b>9 reports requested</b>
<hr/>	
· All reports received: Conventions Nos. 5, 10, 29, 32, 81, 97, 99, 105, 122	
<i>Jersey</i>	<b>8 reports requested</b>
<hr/>	
· All reports received: Conventions Nos. 5, 10, 29, 32, 81, 97, 99, 105	
<i>Montserrat</i>	<b>20 reports requested</b>
<hr/>	
· 5 reports received: Conventions Nos. 11, 19, 26, 87, 98	
· 15 reports not received: Conventions Nos. 8, 12, 14, 16, 17, 29, 42, 58, 59, 82, 85, 95, 97, 105, 108	
<i>St. Helena</i>	<b>18 reports requested</b>
<hr/>	
· No reports received: Conventions Nos. 8, 10, 11, 12, 16, 17, 19, 29, 58, 59, 63, 85, 87, 98, 105, 108, 150, 151	

**United States** **3 reports requested**

· All reports received: Conventions Nos. 105, 144, 182

**Uruguay** **20 reports requested**

· All reports received: Conventions Nos. 27, 29, 32, 77, 78, 79, 81, 90, 94, 95, 97, 105, 129, 131, 137, 138, (167), 181, 182, (184)

**Uzbekistan** **6 reports requested**

· No reports received: Conventions Nos. 29, 98, 100, 105, 111, 122

**Bolivarian Republic of Venezuela** **14 reports requested**

· 13 reports received: Conventions Nos. 6, 26, 29, 81, 87, 88, 95, 97, 105, 138, 139, 143, (182)

· 1 report not received: Convention No. 27

**Viet Nam** **7 reports requested**

· All reports received: Conventions Nos. 6, 27, 81, 123, 124, 138, 182

**Yemen** **10 reports requested**

· All reports received: Conventions Nos. 29, 59, 81, 94, 95, 105, 131, 138, 159, 182

**Zambia** **21 reports requested**

· 2 reports received: Conventions Nos. 95, 117

· 19 reports not received: Conventions Nos. 11, 12, 17, 18, 19, 29, 97, 103, 105, 124, 131, 138, 151, 154, 158, 159, 173, 176, 182

**Zimbabwe** **8 reports requested**

· All reports received: Conventions Nos. 26, 29, 81, 99, 105, 129, 138, 182

**Grand Total**

A total of 2,477 reports (article 22) were requested,  
of which 1,611 reports (65.04 per cent) were received.

A total of 304 reports (article 35) were requested,  
of which 109 reports (35.86 per cent) were received.

**Appendix II. Statistical table of reports received on ratified Conventions  
as of 7 December 2007  
(article 22 of the Constitution)**

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	–		406	90.8%	423	94.6%
1933	522	–		435	83.3%	453	86.7%
1934	601	–		508	84.5%	544	90.5%
1935	630	–		584	92.7%	620	98.4%
1936	662	–		577	87.2%	604	91.2%
1937	702	–		580	82.6%	634	90.3%
1938	748	–		616	82.4%	635	84.9%
1939	766	–		588	76.8%	–	
1944	583	–		251	43.1%	314	53.9%
1945	725	–		351	48.4%	523	72.2%
1946	731	–		370	50.6%	578	79.1%
1947	763	–		581	76.1%	666	87.3%
1948	799	–		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	55.9%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1 026	212	20.6%	840	81.8%	917	89.3%
1954	1 175	268	22.8%	1 077	91.7%	1 119	95.2%
1955	1 234	283	22.9%	1 063	86.1%	1 170	94.8%
1956	1 333	332	24.9%	1 234	92.5%	1 283	96.2%
1957	1 418	210	14.7%	1 295	91.3%	1 349	95.1%
1958	1 558	340	21.8%	1 484	95.2%	1 509	96.8%
<b>As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.</b>							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1 100	256	23.2%	838	76.1%	963	87.4%
1961	1 362	243	18.1%	1 090	80.0%	1 142	83.8%
1962	1 309	200	15.5%	1 059	80.9%	1 121	85.6%
1963	1 624	280	17.2%	1 314	80.9%	1 430	88.0%
1964	1 495	213	14.2%	1 268	84.8%	1 356	90.7%
1965	1 700	282	16.6%	1 444	84.9%	1 527	89.8%
1966	1 562	245	16.3%	1 330	85.1%	1 395	89.3%
1967	1 883	323	17.4%	1 551	84.5%	1 643	89.6%
1968	1 647	281	17.1%	1 409	85.5%	1 470	89.1%
1969	1 821	249	13.4%	1 501	82.4%	1 601	87.9%
1970	1 894	360	18.9%	1 463	77.0%	1 549	81.6%
1971	1 992	237	11.8%	1 504	75.5%	1 707	85.6%
1972	2 025	297	14.6%	1 572	77.6%	1 753	86.5%
1973	2 048	300	14.6%	1 521	74.3%	1 691	82.5%
1974	2 189	370	16.5%	1 854	84.6%	1 958	89.4%
1975	2 034	301	14.8%	1 663	81.7%	1 764	86.7%
1976	2 200	292	13.2%	1 831	83.0%	1 914	87.0%
<b>As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.</b>							
1977	1 529	215	14.0%	1 120	73.2%	1 328	87.0%
1978	1 701	251	14.7%	1 289	75.7%	1 391	81.7%
1979	1 593	234	14.7%	1 270	79.8%	1 376	86.4%
1980	1 581	168	10.6%	1 302	82.2%	1 437	90.8%
1981	1 543	127	8.1%	1 210	78.4%	1 340	86.7%
1982	1 695	332	19.4%	1 382	81.4%	1 493	88.0%
1983	1 737	236	13.5%	1 388	79.9%	1 558	89.6%

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1984	1 669	189	11.3%	1 286	77.0%	1 412	84.6%
1985	1 666	189	11.3%	1 312	78.7%	1 471	88.2%
1986	1 752	207	11.8%	1 388	79.2%	1 529	87.3%
1987	1 793	171	9.5%	1 408	78.4%	1 542	86.0%
1988	1 636	149	9.0%	1 230	75.9%	1 384	84.4%
1989	1 719	196	11.4%	1 256	73.0%	1 409	81.9%
1990	1 958	192	9.8%	1 409	71.9%	1 639	83.7%
1991	2 010	271	13.4%	1 411	69.9%	1 544	76.8%
1992	1 824	313	17.1%	1 194	65.4%	1 384	75.8%
1993	1 906	471	24.7%	1 233	64.6%	1 473	77.2%
1994	2 290	370	16.1%	1 573	68.7%	1 879	82.0%
<b>As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.</b>							
1995	1 252	479	38.2%	824	65.8%	988	78.9%
<b>As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.</b>							
1996	1 806	362	20.5%	1 145	63.3%	1 413	78.2%
1997	1 927	553	28.7%	1 211	62.8%	1 438	74.6%
1998	2 036	463	22.7%	1 264	62.1%	1 455	71.4%
1999	2 288	520	22.7%	1 406	61.4%	1 641	71.7%
2000	2 550	740	29.0%	1 798	70.5%	1 952	76.6%
2001	2 313	598	25.9%	1 513	65.4%	1 672	72.2%
2002	2 368	600	25.3%	1 529	64.5%	1 852	72.1%
2003	2 344	568	24.2%	1 544	65.9%	1 701	72.6%
2004	2 569	659	25.6%	1 645	64.0%	1 852	72.1%
2005	2 638	696	26.4%	1 820	69.0%	2 065	78.3%
2006	2 586	745	28.8%	1 719	66.5%	1 949	75.4%
2007	2 477	845	34.1%	1 611	65.0%		

### Appendix III. List of observations made by employers' and workers' organizations

<b>Albania</b>	
<hr/>	<b>on Conventions Nos.</b>
• Confederation of Trade Unions of Albania (CTUA)	87, 98, 135, 144, 151
• International Trade Union Confederation (ITUC)	87, 98
<b>Algeria</b>	
<hr/>	<b>on Conventions Nos.</b>
• International Trade Union Confederation (ITUC)	87, 98
<b>Angola</b>	
<hr/>	<b>on Conventions Nos.</b>
• National Union of Angolan Workers (UNTA)	17, 18, 27, 87, 98, 100, 111
<b>Argentina</b>	
<hr/>	<b>on Conventions Nos.</b>
• Confederation of Argentinian Workers (CTA)	3, 26, 87, 95, 98, 111, 144
• Federation of Professionals of the Government of the Autonomous City of Buenos Aires	87, 95, 100, 111, 142, 151, 154
• General Confederation of Labour (CGT)	87, 98, 100, 111
• International Trade Union Confederation (ITUC)	87, 98
<b>Armenia</b>	
<hr/>	<b>on Conventions Nos.</b>
• Confederation of Trade Unions of Armenia (CTUA)	131
• Union of Manufacturers and Entrepreneurs of Armenia (UMEA)	131
<b>Australia</b>	
<hr/>	<b>on Conventions Nos.</b>
• Australian Council of Trade Unions (ACTU)	87, 98
• International Trade Union Confederation (ITUC)	87, 98
<b>Austria</b>	
<hr/>	<b>on Conventions Nos.</b>
• Federal Chamber of Labour (BAK)	24, 87, 100, 111
<b>Azerbaijan</b>	
<hr/>	<b>on Conventions Nos.</b>
• International Trade Union Confederation (ITUC)	87, 98
<b>Bahamas</b>	
<hr/>	<b>on Conventions Nos.</b>
• International Trade Union Confederation (ITUC)	87, 98
<b>Bangladesh</b>	
<hr/>	<b>on Conventions Nos.</b>
• International Trade Union Confederation (ITUC)	87, 98
<b>Barbados</b>	
<hr/>	<b>on Conventions Nos.</b>
• International Trade Union Confederation (ITUC)	87, 98
<b>Belarus</b>	
<hr/>	<b>on Conventions Nos.</b>
• International Trade Union Confederation (ITUC)	87, 98
<b>Belgium</b>	
<hr/>	<b>on Conventions Nos.</b>
• International Trade Union Confederation (ITUC)	87, 98
<b>Benin</b>	
<hr/>	<b>on Conventions Nos.</b>
• International Trade Union Confederation (ITUC)	87, 98
<b>Bolivia</b>	
<hr/>	<b>on Conventions Nos.</b>
• International Trade Union Confederation (ITUC)	87, 98

## Bosnia and Herzegovina

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Botswana

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Brazil

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- International Trade Union Confederation (ITUC)
- Workers Union from Road Transport of Liquid and Gas Cargo, Derived from Oil and Chemical Products from the 'Estado do Grande Sul' (SINDILÍQUIDA/RS)

on Conventions Nos.

98  
81, 136, 139, 148, 155, 170

## Bulgaria

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- Bulgarian Industrial Association (BIA)
- International Trade Union Confederation (ITUC)

on Conventions Nos.

98  
87, 98

## Burkina Faso

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Burundi

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Cambodia

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Cameroon

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- General Confederation of Labour - Liberty Cameroon - CGTL
- General Union of Cameroon Workers (UGTC)
- International Trade Union Confederation (ITUC)

on Conventions Nos.

19, 81, 87, 97, 98, 100, 111, 122, 143,  
158  
81, 87, 95, 97, 100, 111, 122, 131,  
135, 158  
87, 98

## Cape Verde

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- Cape Verde Confederation of Free Trade Unions (CCSL)

on Convention No.

111

## Central African Republic

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Chad

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Chile

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- Circle of Retired Police Officers of Ñielol de Temuco, Chile (CFRG)
- International Trade Union Confederation (ITUC)
- Workers National Union

on Conventions Nos.

35  
87, 98  
144

## China

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- All-China Federation of Trade Unions (ACFTU)

on Convention No.

122

## Colombia

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- Colombian Association of Airline Pilots (ACDAC)
- International Trade Union Confederation (ITUC)
- Single Confederation of Workers of Colombia (CUT)
- Union of Maritime and Inland Water Transport Industry Workers (UNIMAR)
- Workers' Trade Union Confederation (USO)

on Conventions Nos.

95  
87, 98  
87, 98, 100, 111, 129, 144, 151, 154  
95  
169

## Costa Rica

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- International Trade Union Confederation (ITUC)
- Union of Public and Private Enterprise Workers (SITEPP)

on Conventions Nos.

87, 98  
87, 98

## Côte d'Ivoire

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Croatia

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- Association of the Workers Affected by Asbestosis - Vranjic
- International Trade Union Confederation (ITUC)

on Conventions Nos.

162  
87, 98

## Cuba

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Czech Republic

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- Czech-Moravian Confederation of Trade Unions (CM KOS)
- International Trade Union Confederation (ITUC)

on Conventions Nos.

98, 100, 111, 122, 144  
87, 98

## Democratic Republic of the Congo

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Djibouti

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- General Union of Djibouti Workers (UGTD)
- International Trade Union Confederation (ITUC)
- Labour Union of Djibouti (UDT)

on Conventions Nos.

1, 9, 11, 12, 14, 16, 17, 18, 19, 24, 26,  
37, 44, 52, 81, 87, 88, 89, 94, 95, 96,  
98, 99, 100, 111, 115, 122, 144  
87, 98  
26

## Dominican Republic

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Ecuador

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- Ecuadorian Confederation of Free Trade Unions (CEOSL)
- International Trade Union Confederation (ITUC)

on Conventions Nos.

169  
87, 98

## Egypt

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## El Salvador

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Equatorial Guinea

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Eritrea

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Estonia

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Ethiopia

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Fiji

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- International Trade Union Confederation (ITUC)

on Conventions Nos.

87, 98

## Finland

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- Central Organization of Finnish Trade Unions (SAK)
- Commission for Local Authority Employers (KT)
- Confederation of Finnish Industries (EK)
- Confederation of Unions for Academic Professionals in Finland (AKAVA)
- Finnish Confederation of Salaried Employees (STTK)
- The State Employer's Office (VTML)

### on Conventions Nos.

12, 19, 87, 98, 100, 111, 118, 121,  
122, 128, 130, 168  
12, 87, 100, 111, 130  
100  
87, 98, 100, 128, 130, 168  
100, 111, 128, 130, 168  
87, 100

## France

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- General Confederation of Labour - Force Ouvrière (CGT-FO)

### on Conventions Nos.

87, 98

## Gabon

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- International Trade Union Confederation (ITUC)
- Trade Union Congress of Gabon (CSG)

### on Conventions Nos.

87, 98  
87, 98

## Georgia

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- Georgian Trade Union Confederation (GTUC)
- International Trade Union Confederation (ITUC)

### on Conventions Nos.

87, 98  
87, 98

## Germany

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- Confederation of Officials, Employees and Technical Workers, DBB (BTB)
- German Confederation of Trade Unions (DGB)
- International Trade Union Confederation (ITUC)

### on Conventions Nos.

81  
27, 152  
87, 98

## Ghana

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- International Trade Union Confederation (ITUC)

### on Conventions Nos.

87, 98

## Grenada

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- Grenada Trade's Union Council (GTUC)

### on Convention No.

87

## Guatemala

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- International Trade Union Confederation (ITUC)
- Union Movement, Guatemalan Indigenous and Farmers for the defence of the Workers' Rights

### on Conventions Nos.

87, 98  
87, 98, 111, 122, 144

## Guinea

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- International Trade Union Confederation (ITUC)

### on Conventions Nos.

87, 98

## Guinea-Bissau

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- International Trade Union Confederation (ITUC)

### on Convention No.

98

## Haiti

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- International Trade Union Confederation (ITUC)

### on Conventions Nos.

87, 98

## Honduras

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- International Trade Union Confederation (ITUC)

### on Conventions Nos.

87, 98

## Hungary

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- International Trade Union Confederation (ITUC)

### on Conventions Nos.

87, 98

## India

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- International Trade Union Confederation (ITUC)

### on Convention No.

29

## Indonesia

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- International Trade Union Confederation (ITUC)

### on Conventions Nos.

87, 98

<b>Iraq</b>	
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• International Trade Union Confederation (ITUC)	on Convention No. 98
<b>Israel</b>	
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• International Trade Union Confederation (ITUC)	on Conventions Nos. 87, 98
<b>Jamaica</b>	
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• International Trade Union Confederation (ITUC)	on Conventions Nos. 87, 98
<b>Japan</b>	
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• All Japan Seamen's Union (AJSU)	on Conventions Nos. 29
• All Japan Shipbuilding and Engineering Union (ALSEU)	29
• All Toyota Labor Union (ATU)	29
• Federation of Korean Trade Unions (FKTU)	29
• Heavy Industry Labor Union (HILU)	29
• International Trade Union Confederation (ITUC)	29, 87, 98
• Japan Dockworkers Union Nagoya Branch	29
• Japan Federation of Prefectural and Municipal Workers' Unions (JICHIREN)	87, 98
• Japanese Trade Union Confederation (JTUC-RENGO)	19, 27, 87, 88, 98, 100, 102, 121, 122, 144
• Netherlands Trade Union Confederation (FNV)	29
• Tokyo Local Council of Trade Unions	29
• Working Women Network (WWN)	100
<b>Jordan</b>	
<hr/>	
• International Trade Union Confederation (ITUC)	on Convention No. 98
<b>Republic of Korea</b>	
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• Federation of Korean Trade Unions (FKTU)	on Conventions Nos. 19, 100
• Korean Confederation of Trade Unions (KCTU)	19, 100, 111, 156
<b>Lesotho</b>	
<hr/>	
• Congress of Lesotho Trade Unions (CLTU)	on Conventions Nos. 98
<b>Libyan Arab Jamahiriya</b>	
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• General Union of Producers (GUP)	on Conventions Nos. 87, 98
<b>Mauritania</b>	
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• General Confederation of Workers of Mauritania (CGTM)	on Conventions Nos. 26, 29, 81, 94, 95, 182
• Labour Inspectors and Controllers Association of Mauritania (AICTM)	81
<b>Mauritius</b>	
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• Federation of Parastatal Bodies & Other Unions (FPBOU)	on Conventions Nos. 87, 97
• Mauritius Employers' Federation (MEF)	26, 97, 137
• Mauritius Trade Union Congress	98
<b>Mexico</b>	
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• Mexican Union of Electricians (SME)	on Conventions Nos. 169
• Union of the Workers of the National Autonomous University of Mexico (STUNAM)	102
<b>Mozambique</b>	
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• Workers' Organization of Mozambique (OTM)	on Conventions Nos. 29, 138, 182
<b>Myanmar</b>	
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• International Trade Union Confederation (ITUC)	on Conventions Nos. 29, 87

## Namibia

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- Public Service Union of Namibia (PSUN)

on Convention No.

87

## Nepal

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- General Federation of Nepalese Trade Unions (GEFONT)

on Conventions Nos.

131, 182

## Netherlands

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- Confederation of Netherlands Industry and Employers (VNO-NCW)
- National Federation of Christian Trade Unions (CNV)
- Netherlands Trade Union Confederation (FNV)

on Conventions Nos.

81  
81, 88, 90, 131, 138, 182  
81, 128, 138

## Aruba

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- Associated General Contractors of Aruba (AGCA)
- Federation of Workers of Aruba (FTA)
- The Aruba Hotel and Tourism Association (AHATA)

on Conventions Nos.

135  
95  
95

## New Zealand

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- Business New Zealand
- New Zealand Council of Trade Unions (NZCTU)

on Conventions Nos.

26, 29, 32, 81, 97, 99, 182  
26, 29, 32, 59, 81, 97, 99, 182

## Norway

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- Confederation of Trade Unions (LO)

on Conventions Nos.

81, 90, 97, 137, 152, 182

## Pakistan

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- All Pakistan Federation of Trade Unions (APFTU)
- Pakistan Workers Federation (PWF)

on Conventions Nos.

29  
81, 182

## Panama

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- National Federation of Associations and Organizations of Public Servants (FENASEP)

on Conventions Nos.

3, 95

## Paraguay

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- Latin-American Confederation of Labour Inspectors (CIIT)

on Convention No.

81

## Peru

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- General Confederation of Workers of Peru (CGTP)
- General Union of Wholesale Dealers and Retailers of the Grau Techno Commercial Centre (SIGECOMGT)

on Conventions Nos.

37, 87, 98, 151  
169

## Philippines

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- International Trade Union Confederation (ITUC)

on Convention No.

87

## Portugal

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- Confederation of Portuguese Industry (CIP)
- Confederation of Trade and Services of Portugal (CCSP)
- General Confederation of Portuguese Workers (CGTP)
- General Confederation of Portuguese Workers (CGTP-IN)
- General Union of Workers (UGT)
- Portuguese Confederation of Tourism (CTP)

on Conventions Nos.

81  
6, 29, 77, 78, 81, 95, 97, 102, 129,  
131, 138, 143, 182  
6, 77, 78, 81, 129, 131, 143, 182  
102  
6, 29, 77, 78, 81, 95, 97, 102, 105,  
124, 129, 131, 137, 138, 143, 147  
29, 81, 102, 131

## Romania

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- Democratic Confederation of Trade Unions of Romania (CSDR)
- Federation of National Education (FEN)
- National Trade Union Confederation (CNS 'CARTEL ALFA')
- National Union Block (BUN)

on Conventions Nos.

95  
98  
87  
87

<b>Rwanda</b>	
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• Congress of Labour and Brotherhood of Rwanda (COTRAF-RWANDA)	on Convention No. 111
<b>Senegal</b>	
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• Free Workers Union of Senegal (UTLS)	on Conventions Nos. 87, 98
• National Confederation of Workers of Senegal	105
<b>Serbia</b>	
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• Confederation of Autonomous Trade Unions of Serbia	on Conventions Nos. 81, 122, 138, 143, 144, 182
• Trade Union Confederation 'Nezavisnost'	87, 111, 122, 144
• Union of Employers of Serbia	81, 122, 144
<b>Slovenia</b>	
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• Trade Union Confederation 90 (KS90)	on Convention No. 180
<b>Sri Lanka</b>	
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• Employers Federation of Ceylon (EFC)	on Conventions Nos. 131
• GLSOA, COPSITU, UFL, PU, FTZWU, HSTUA	81
• Lanka Jathika Estate Workers' Union (LJEWU)	29, 81, 95, 105, 131, 138, 182
<b>Swaziland</b>	
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• Swaziland Federation of Trade Unions (SFTU)	on Convention No. 87
<b>Switzerland</b>	
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• Swiss Federation of Trade Unions (USS/SGB)	on Convention No. 98
<b>Thailand</b>	
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• National Congress of Thai Labour	on Conventions Nos. 19, 88, 100, 122, 138
<b>Turkey</b>	
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• Confederation of Progressive Trade Unions of Turkey (DISK)	on Conventions Nos. 87, 98
• Confederation of Public Servants Trade Unions (KESK)	87, 98, 151
• International Trade Union Confederation (ITUC)	87, 98
<b>Ukraine</b>	
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• Independent Union of Miners at the Barakov Mine Enterprise (IUMBME)	on Conventions Nos. 87, 98
<b>United States</b>	
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• American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)	on Convention No. 144
<b>Uruguay</b>	
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• Inter-Union Assembly of Workers - National Convention of Workers (PIT-CNT)	on Conventions Nos. 81, 94, 129, 131, 138, 181, 184
<b>Bolivarian Republic of Venezuela</b>	
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• Confederation of Workers of Venezuela (CTV)	on Conventions Nos. 87
• International Organization of Employers (IOE)	26, 95, 144, 158
• International Organization of Employers (OIE)	87, 144
• International Trade Union Confederation (ITUC)	87, 98
• National Federation of Retired and Pensioned Workers of Venezuela (FETRAJUPTTEL)	111
<b>Zimbabwe</b>	
<hr/>	
• International Trade Union Confederation (ITUC)	on Conventions Nos. 87, 98

**Appendix IV. Information supplied by governments with regard to the  
obligation to submit Conventions and Recommendations  
to the competent authorities  
(31st to 95th Sessions of the International Labour Conference, 1948-2006)**

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 Maritime Labour Convention, 2006, adopted by the Conference at its 94th (Maritime) Session (February 2006). The period of 12 months provided for the submission to the competent authorities of the Maritime Labour Convention, 2006, expired on 23 February 2007, and the period of 18 months on 23 August 2007.

At its 95th Session (June 2006), the Conference adopted the Promotional Framework for Occupational Safety and Health Convention and Recommendation, 2006, and the Employment Relationship Recommendation, 2006. The period of 12 months provided for the submission to the competent authorities of Convention No. 187 and Recommendations Nos 197 and 198 expired on 16 June 2007, and the period of 18 months will expire on 16 December 2007.

At its 96th Session (May–June 2007), the Conference adopted the Work in Fishing Convention and Recommendation, 2007.<sup>1</sup> The period of 12 months provided for the submission to the competent authorities of Convention No. 188 and Recommendation No. 198 will expire on 15 June 2008, and the period of 18 months on 15 December 2008.

In its next report, this summary will contain information on the progress achieved by governments in the submission to the competent authorities of the instruments adopted at the 95th and 96th Sessions of the Conference.

This summarized information also consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 96th Session of the Conference (Geneva, May–June 2007) and which could not therefore be laid before the Conference at that session.

**Afghanistan.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 18 April 2007.

**Algeria.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the People's National Assembly and the Council of the Nation on 22 March 2007.

**Armenia.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 25 May 2007.

**Australia.** The Maritime Labour Convention, 2006, was submitted to the federal Parliament on 16 August 2007.

**Barbados.** The instruments adopted at the 95th Session of the Conference were submitted to Parliament on 31 July 2007.

**Belarus.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 11 April and 24 July 2007, respectively.

**Belgium.** The Maritime Labour Convention, 2006, was submitted to the Chamber of Representatives and the Senate on 25 July 2007.

**Benin.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 17 August 2007.

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<sup>1</sup> At its 294th Session (November 2005), the Governing Body decided to include on the agenda of the 96th Session (June 2007) of the Conference an item on work in the fishing sector with a view to the adoption of a Convention supplemented by a Recommendation. In consequence, the Director-General has not communicated to member States the authentic text of the Work in Fishing Recommendation, adopted on 16 June 2005 by the International Labour Conference (93rd Session). Recommendation No. 196 of 2005 has been replaced by Recommendation No. 198 of 2007.

**Botswana.** The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 23 August 2007.

**Bulgaria.** The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 29 March 2007.

**Burundi.** The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 28 May 2007.

**Canada.** The Maritime Labour Convention, 2006, was submitted to the House of Commons and the Senate on 17 October 2007.

**China.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the State Council and the Standing Committee of the National People's Congress in May 2007.

**Costa Rica.** The instruments adopted at the 95th Session of the Conference were submitted to the Legislative Assembly on 13 November 2006.

**Czech Republic.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to Parliament on 18 July and 27 September 2007, respectively.

**Denmark.** The Maritime Labour Convention, 2006, and Recommendation No. 198 were submitted to Parliament (*Folketinget*) in February 2007.

**Dominican Republic.** The Maritime Labour Convention, 2006, was submitted to the National Congress on 18 October 2006.

**Ecuador.** The Maritime Labour Convention, 2006, was submitted to the National Congress on 28 May 2007.

**Egypt.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the People's Assembly on 6 June and 29 October 2006, respectively.

**Finland.** The instruments adopted at the 95th Session of the Conference were submitted to Parliament on 1 June 2007.

**France.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly and the Senate on 23 August and 18 July 2007, respectively.

**Germany.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the *Bundestag* and the *Bundesrat* on 26 and 27 July 2007, respectively.

**Greece.** The Maritime Labour Convention, 2006, was submitted to the Greek Chamber of Deputies in April 2007. The instruments adopted at the 95th Session were submitted to Parliament on 19 October 2007.

**Guatemala.** The instruments adopted at the 94th, 95th and 96th Sessions of the Conference were submitted to the Congress of the Republic on 14 July and 6 October 2006, and on 28 August 2007, respectively.

**Guinea-Bissau.** The Maritime Labour Convention, 2006, was submitted to the National People's Assembly on 1 September 2006.

**Hungary.** The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 16 April 2007.

**Iceland.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to Parliament in November 2006 and March 2007, respectively.

**India.** The Maritime Labour Convention, 2006, was submitted to the House of the People and the Council of States on 29 August and 10 September 2007.

**Indonesia.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the House of Representatives on 12 March and 14 November 2007, respectively.

**Islamic Republic of Iran.** The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Islamic Consultative Assembly.

**Israel.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the *Knesset* on 10 January and 2 July 2007, respectively.

**Italy.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the House of Representatives and the Senate on 24 January 2007.

**Japan.** The ratification of Convention No. 187 was registered on 24 July 2007. Recommendation No. 198 was submitted to the *Diet* on 12 June 2007.

**Republic of Korea.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 25 May 2007.

**Latvia.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to Parliament on 19 June 2007.

**Lebanon.** The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 17 March and 10 April 2007, and the Maritime Labour Convention, 2006, was submitted on 13 June 2007.

**Lesotho.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to Parliament (the Assembly and the Senate).

**Liberia.** The ratification of the Maritime Labour Convention, 2006, was registered on 7 June 2006.

**Lithuania.** The instruments adopted at the 95th Session of the Conference were submitted to the Senate on 7 September 2007.

**Luxembourg.** The instruments adopted at the 94th, 95th and 96th Sessions of the Conference were submitted to the Chamber of Deputies in May and August 2007.

**Malawi.** The Maritime Labour Convention, 2006, was submitted to the National Assembly on 26 July 2006 and the instruments adopted at the 95th and 96th Sessions of the Conference were submitted on 14 September 2007.

**Malaysia.** The Maritime Labour Convention, 2006, was submitted to Parliament on 8 May 2007.

**Mauritius.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 7 February and 8 May 2007, respectively.

**Morocco.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to Parliament on 18 December 2006 and 26 February 2007, respectively.

**Myanmar.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to a competent authority on 12 December 2006 and 3 January 2007, respectively.

**New Zealand.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the House of Representatives on 16 March and 12 June 2007, respectively.

**Nicaragua.** The Maritime Labour Convention, 2006, has been submitted to the National Assembly on 23 August 2007.

**Nigeria.** The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 21 August 2006.

**Norway.** The instruments adopted at the 95th Session of the Conference were submitted to Parliament (*Storting*) on 5 October 2007.

**Philippines.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the House of Representatives and the Senate on 5 September and 8 November 2006, respectively.

**Poland.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the *Sejm* on 23 February and 27 May 2007, respectively.

**Portugal.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the Assembly of the Republic on 10 May 2007.

**Romania.** The Maritime Labour Convention, 2006, was submitted to the House of Representatives and the Senate on 5 March and 4 April 2007. The instruments adopted at the 95th Session of the Conference were submitted to the Senate on 23 October and the House of Representatives on 13 November 2007.

**San Marino.** The instruments adopted at the 94th, 95th and 96th Sessions of the Conference were submitted to the Great and General Council on 17 July 2007.

**Saudi Arabia.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the Council of Ministers and the Consultative Council on 16 May and 4 July 2007, respectively.

**Slovakia.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Council on 19 December 2006.

**United Republic of Tanzania.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 30 July 2007. The instruments adopted at the 96th Session of the Conference were submitted to the National Assembly on 19 October 2007.

**Thailand.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 4 April 2007 and 6 December 2006, respectively. The instruments adopted at the 96th Session of the Conference were submitted to the National Assembly on 25 November 2007.

**Tunisia.** The instruments adopted at the 94th, 95th and 96th Sessions of the Conference were submitted to the Chamber of Deputies on 28 November, 18 December 2006 and 4 September 2007, respectively.

**Turkey.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the Grand National Assembly on 19 December 2006.

**United Arab Emirates.** The instruments adopted at the 94th and 95th Sessions of the Conference have been submitted to the competent authorities.

**United Kingdom.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to Parliament in March and October 2007.

**Uruguay.** Recommendations Nos 197 and 198 were submitted to the General Assembly on 10 October 2007.

**Viet Nam.** The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 27 August 2007 and 9 October 2006, respectively.

**Zimbabwe.** The Maritime Labour Convention, 2006, was submitted to Parliament on 18 September 2007.

The Committee has deemed it necessary in certain cases to request additional information on the nature of the competent authorities to which 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 95th Sessions of the International Labour Conference, 1948-2006)

*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) and 93rd Session (June 2004).*

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Afghanistan</b>	31-56, 58-72, 74-92, 94-95	-
<b>Albania</b>	31-49, 79-81, 82(C176; R183), 83, 84(C178; R186), 85, 87-88, 90(P155), 91	78, 82(P081), 84(C179; C180; P147; R185; R187), 86, 89, 90(R193; R194), 92, 94, 95
<b>Algeria</b>	47-56, 58-72, 74-92, 94-95	-
<b>Angola</b>	61-72, 74-78, 79(C173), 80-81, 82(C176; R183), 83-85, 87-90	79(R180), 82(P081), 86, 91, 92, 94, 95
<b>Antigua and Barbuda</b>	68-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Argentina</b>	31-56, 58-72, 74-90, 92	91, 94, 95
<b>Armenia</b>	80-81, 82(C176; R183), 83-89, 90(R193; R194), 91-92, 94-95	82(P081), 90(P155)
<b>Australia</b>	31-56, 58-72, 74-92, 94	95
<b>Austria</b>	31-56, 58-72, 74-92	94, 95
<b>Azerbaijan</b>	79(C173), 80-82, 85-87, 91-92	79(R180), 83, 84, 88, 89, 90, 94, 95
<b>Bahamas</b>	61-72, 74-84, 87, 91	85, 86, 88, 89, 90, 92, 94, 95
<b>Bahrain</b>	63-72, 74-87	88, 89, 90, 91, 92, 94, 95
<b>Bangladesh</b>	58-72, 74-76, 77(C171; R178), 78, 80, 84(C178; C180; P147), 85(C181), 87	77(C170; P089; R177), 79, 81, 82, 83, 84(C179; R185; R186; R187), 85(R188), 86, 88, 89, 90, 91, 92, 94, 95

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Barbados</b> 51-56, 58-72, 74-92, 95	<b>94</b>
<b>Belarus</b> 37-56, 58-72, 74-92, 94-95	-
<b>Belgium</b> 31-56, 58-72, 74-92, 94	<b>95</b>
<b>Belize</b> 68-72, 74-76, 84(P147), 87-88	<b>77, 78, 79, 80, 81, 82, 83, 84(C178; C179; C180; R185; R186; R187), 85, 86, 89, 90, 91, 92, 94, 95</b>
<b>Benin</b> 45-56, 58-72, 74-92, 94-95	-
<b>Bolivia</b> 31-56, 58-72, 74-79, 80(C174), 81(C175), 82(C176), 83(C177), 84(C178; C179; C180), 85(C181), 87, 88(C183), 89(C184), 91	<b>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</b>
<b>Bosnia and Herzegovina</b> 87	<b>80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95</b>
<b>Botswana</b> 64-72, 74-87, 95	<b>88, 89, 90, 91, 92, 94</b>
<b>Brazil</b> 31-50, 51(C127; R128; R129; R130; R131), 53(R133; R134), 54-56, 58-62, 63(C148; R156; R157), 64(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	<b>51(C128), 52, 53(C129; C130), 63(C149), 64(C150; C151), 67(C156), 68(C157), 78, 79, 81, 82(P081), 83, 84(C179; C180; P147; R186; R187), 85, 86, 88, 90, 92, 94, 95</b>
<b>Bulgaria</b> 31-56, 58-72, 74-92, 94-95	-
<b>Burkina Faso</b> 45-56, 58-72, 74-87	<b>88, 89, 90, 91, 92, 94, 95</b>
<b>Burundi</b> 47-56, 58-72, 74-92, 95	<b>94</b>
<b>Cambodia</b> 53-54, 56, 58(C138; R146), 64(C150; R158), 87	<b>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</b>
<b>Cameroon</b> 44-56, 58-68, 72, 74, 87	<b>69, 70, 71, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95</b>
<b>Canada</b> 31-56, 58-72, 74-90, 94	<b>91, 92, 95</b>
<b>Cape Verde</b> 65-72, 74-81, 87	<b>82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95</b>
<b>Central African Republic</b> 45-56, 58-72, 74, 87	<b>75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95</b>

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Chad</b>	45-56, 58-72, 74-79, 84-87	80, 81, 82, 83, 88, 89, 90, 91, 92, 94, 95
<b>Chile</b>	31-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>China</b>	31-56, 58-72, 74-92, 94-95	-
<b>Colombia</b>	31-56, 58-72, 74, 75(C167; R175; R176), 76-78, 79(R180), 80, 81(C175), 87, 88(C183), 89(C184)	75(C168), 79(C173), 81(R182), 82, 83, 84, 85, 86, 88(R191), 89(R192), 90, 91, 92, 94, 95
<b>Comoros</b>	65-72, 74-78, 87	79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Congo</b>	45-53, 54(C131; C132), 55(C133; C134), 56, 58(C138; R146), 59, 60(C142; R150), 61, 63(C148; C149; R157), 64-66, 67(C154; C155; C156), 68(C158), 71(C160; C161), 75(C167; C168), 76, 87	54(R135; R136), 55(R137; R138; R139; R140; R141; R142), 58(C137; R145), 60(C141; C143; R149; R151), 62, 63(R156), 67(R163; R164; R165), 68(C157; P110; R166), 69, 70, 71(R170; R171), 72, 74, 75(R175; R176), 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Costa Rica</b>	31-56, 58-72, 74-92, 95	94
<b>Côte d'Ivoire</b>	45-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Croatia</b>	80-85, 87	86, 88, 89, 90, 91, 92, 94, 95
<b>Cuba</b>	31-56, 58-72, 74-91	92, 94, 95
<b>Cyprus</b>	45-56, 58-72, 74-90, 92	91, 94, 95
<b>Czech Republic</b>	80-92, 94-95	-
<b>Democratic Republic of the Congo</b>	45-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Denmark</b>	31-56, 58-72, 74-92, 94, 95(R198)	95(C187; R197)
<b>Djibouti</b>	64-65, 67, 71-72, 83, 87	66, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Dominica</b>	68-72, 74-79, 87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Dominican Republic</b>	31-56, 58-72, 74-92, 94	95
<b>Ecuador</b>	31-56, 58-72, 74-88, 90(P155), 92, 94	89, 90(R193; R194), 91, 95

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Egypt</b>	31-56, 58-72, 74-92, 94-95	-
<b>El Salvador</b>	31-56, 58-61, 63(C149), 64, 67(C155; C156; R164; R165), 69(C159; R168), 71-72, 74-81, 87, 90(P155)	62, 63(C148; R156; R157), 65, 66, 67(C154; R163), 68, 69(R167), 70, 82, 83, 84, 85, 86, 88, 89, 90(R193; R194), 91, 92, 94, 95
<b>Equatorial Guinea</b>	67-72, 74-79, 84, 87	80, 81, 82, 83, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Eritrea</b>	80-91	92, 94, 95
<b>Estonia</b>	79-92	94, 95
<b>Ethiopia</b>	31-56, 58-72, 74-87, 88(C183), 89	88(R191), 90, 91, 92, 94, 95
<b>Fiji</b>	59-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Finland</b>	31-56, 58-72, 74-92, 95	94
<b>France</b>	31-56, 58-72, 74-92, 94-95	-
<b>Gabon</b>	45-56, 58-72, 75-81, 82(C176), 83(C177), 84(C179), 85(C181), 87, 89(C184), 91	74, 82(P081; R183), 83(R184), 84(C178; C180; P147; R185; R186; R187), 85(R188), 86, 88, 89(R192), 90, 92, 94, 95
<b>Gambia</b>	87	82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Georgia</b>	85, 86-87	80, 81, 82, 83, 84, 88, 89, 90, 91, 92, 94, 95
<b>Germany</b>	34-56, 58-72, 74-76, 77(C170; R177), 78-92, 94-95	77(C171; P089; R178)
<b>Ghana</b>	40-56, 58-72, 74-79, 83, 84(C178; C179; C180; P147; R187), 85-87	80, 81, 82, 84(R185; R186), 88, 89, 90, 91, 92, 94, 95
<b>Greece</b>	31-56, 58-72, 74-92, 94-95	-
<b>Grenada</b>	66-72, 74-80, 82(C176), 83(C177), 84(C178), 87	81, 82(P081; R183), 83(R184), 84(C179; C180; P147; R185; R186; R187), 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Guatemala</b>	31-56, 58-72, 74-92, 94-95	-
<b>Guinea</b>	43-56, 58-72, 74-83, 87	84, 85, 86, 88, 89, 90, 91, 92, 94, 95

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Guinea-Bissau</b>	63-72, 74-82, 83(R184), 84-87, 88(R191), 94	83(C177), 88(C183), 89, 90, 91, 92, 95
<b>Guyana</b>	50-56, 58-72, 74-92	94, 95
<b>Haiti</b>	31-56, 58-66, 67(C156; R165), 69-72, 74, 75(C167), 87	67(C154; C155; R163; R164), 68, 75(C168; R175; R176), 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Honduras</b>	39-56, 58-72, 74-92	94, 95
<b>Hungary</b>	31-56, 58-72, 74-92, 95	94
<b>Iceland</b>	31-56, 58-72, 74-92, 94-95	-
<b>India</b>	31-56, 58-72, 74-92, 94	95
<b>Indonesia</b>	33-56, 58-72, 74-92, 94-95	-
<b>Islamic Republic of Iran</b>	31-56, 58-72, 74-83, 84(C178; C179; C180; R185; R186; R187), 85-89, 90(R193; R194), 92, 95	84(P147), 90(P155), 91, 94
<b>Iraq</b>	31-56, 58-72, 74-87, 89	88, 90, 91, 92, 94, 95
<b>Ireland</b>	31-56, 58-72, 74-87	88, 89, 90, 91, 92, 94, 95
<b>Israel</b>	32-56, 58-72, 74-92, 94-95	-
<b>Italy</b>	31-56, 58-72, 74-92, 94-95	-
<b>Jamaica</b>	47-56, 58-72, 74-91	92, 94, 95
<b>Japan</b>	35-56, 58-72, 74-92, 94-95	-
<b>Jordan</b>	39-56, 58-72, 74-91	92, 94, 95
<b>Kazakhstan</b>	87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Kenya</b>	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
<b>Kiribati</b>	-	88, 89, 90, 91, 92, 94, 95

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Republic of Korea</b> 79-92, 94-95	-
<b>Kuwait</b> 45-56, 58-72, 74-76, 78-79, 80(C174), 81-85, 87-88, 90	77, 80(R181), 86, 89, 91, 92, 94, 95
<b>Kyrgyzstan</b> 87, 89	79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 94, 95
<b>Lao People's Democratic Republic</b> 48-56, 58-72, 74-81, 87	82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Latvia</b> 79-92, 94-95	-
<b>Lebanon</b> 31-56, 58-72, 74-92, 94-95	-
<b>Lesotho</b> 51-53, 66-72, 74-92, 94-95	-
<b>Liberia</b> 31-56, 58-72, 74-76, 77(C170; C171; R177; R178), 78-81, 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-87, 94	77(P089), 82(P081), 84(P147), 88, 89, 90, 91, 92, 95
<b>Libyan Arab Jamahiriya</b> 35-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Lithuania</b> 79-92, 95	94
<b>Luxembourg</b> 31-56, 58-72, 74-92, 94-95	-
<b>Madagascar</b> 45-56, 58-72, 74-89, 91	90, 92, 94, 95
<b>Malawi</b> 49-56, 58-72, 74-92, 94-95	-
<b>Malaysia</b> 41-56, 58-72, 74-92, 94	95
<b>Mali</b> 44-56, 58-72, 74-83, 84(C178; C179; C180; R185; R186; R187), 85, 87-89, 90(R193; R194), 91	84(P147), 86, 90(P155), 92, 94, 95
<b>Malta</b> 49-56, 58-72, 74-90	91, 92, 94, 95
<b>Mauritania</b> 45-56, 58-72, 74-80, 81(C175), 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-91	81(R182), 82(P081), 84(P147), 92, 94, 95
<b>Mauritius</b> 53-56, 58-72, 74-92, 94-95	-
<b>Mexico</b> 31-56, 58-72, 74-89, 90(P155; R194), 91	90(R193), 92, 94, 95

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Republic of Moldova</b> 79-91	92, 94, 95
<b>Mongolia</b> 52-56, 58-72, 74-81, 87-89	82, 83, 84, 85, 86, 90, 91, 92, 94, 95
<b>Morocco</b> 39-56, 58-72, 74-92, 94-95	-
<b>Mozambique</b> 61-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Myanmar</b> 31-56, 58-72, 74-92, 94-95	-
<b>Namibia</b> 78-87, 89(C184), 90(R194)	88, 89(R192), 90(P155; R193), 91, 92, 94, 95
<b>Nepal</b> 51-56, 58-72, 74-81, 83, 85, 87	82, 84, 86, 88, 89, 90, 91, 92, 94, 95
<b>Netherlands</b> 31-56, 58-72, 74-92	94, 95
<b>New Zealand</b> 31-56, 58-72, 74-92, 94-95	-
<b>Nicaragua</b> 40-56, 58-72, 74-92, 94	95
<b>Niger</b> 45-56, 58-72, 74-82, 87-88	83, 84, 85, 86, 89, 90, 91, 92, 94, 95
<b>Nigeria</b> 45-56, 58-72, 74-92, 95	94
<b>Norway</b> 31-56, 58-72, 74-92	94, 95
<b>Oman</b> 81-91	92, 94, 95
<b>Pakistan</b> 31-56, 58-72, 74-80, 87, 91	81, 82, 83, 84, 85, 86, 88, 89, 90, 92, 94, 95
<b>Panama</b> 31-56, 58-72, 74-87, 88(R191), 89(R192), 90(R193; R194), 92	88(C183), 89(C184), 90(P155), 91, 94, 95
<b>Papua New Guinea</b> 61-72, 74-87	88, 89, 90, 91, 92, 94, 95
<b>Paraguay</b> 40-56, 58-72, 74-84, 87	85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Peru</b> 31-56, 58-72, 74-83, 84(C178; R186), 85-87	84(C179; C180; P147; R185; R187), 88, 89, 90, 91, 92, 94, 95
<b>Philippines</b> 31-56, 58-72, 74-92, 94-95	-

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Poland</b>	31-56, 58-72, 74-92, 94-95	-
<b>Portugal</b>	31-56, 58-72, 74-92, 94-95	-
<b>Qatar</b>	58-72, 74-92	94, 95
<b>Romania</b>	39-56, 58-72, 74-92, 94-95	-
<b>Russian Federation</b>	37-56, 58-72, 74-88	89, 90, 91, 92, 94, 95
<b>Rwanda</b>	47-56, 58-72, 74-79, 81, 87	80, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Saint Kitts and Nevis</b>	87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Saint Lucia</b>	67(C154; R163), 68(C158; R166), 87	66, 67(C155; C156; R164; R165), 68(C157; P110), 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Saint Vincent and the Grenadines</b>	86, 87	82, 83, 84, 85, 88, 89, 90, 91, 92, 94, 95
<b>Samoa</b>	-	94, 95
<b>San Marino</b>	69-72, 74-92, 94-95	-
<b>Sao Tome and Principe</b>	68-72, 74-76, 87, 89	77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 94, 95
<b>Saudi Arabia</b>	61-72, 74-92, 94-95	-
<b>Senegal</b>	44-56, 58-72, 74-78, 87	79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Serbia</b>	89	90, 91, 92, 94, 95
<b>Seychelles</b>	63-72, 74-88	89, 90, 91, 92, 94, 95
<b>Sierra Leone</b>	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
<b>Singapore</b>	50-56, 58-72, 74-91	92, 94, 95

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Slovakia</b> 80-83, 86-92, 94-95	<b>84, 85</b>
<b>Slovenia</b> 79-92	<b>94, 95</b>
<b>Solomon Islands</b> 74	<b>70, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95</b>
<b>Somalia</b> 45-56, 58-72, 74-75	<b>76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95</b>
<b>South Africa</b> 31-50, 68, 74, 81-92	<b>94, 95</b>
<b>Spain</b> 39-56, 58-62, 63(C148; R156), 64-72, 74-79, 82, 84(C180; R187), 85, 87	<b>63(C149; R157), 80, 81, 83, 84(C178; C179; P147; R185; R186), 86, 88, 89, 90, 91, 92, 94, 95</b>
<b>Sri Lanka</b> 31-56, 58-72, 74-92	<b>94, 95</b>
<b>Sudan</b> 39-56, 58-72, 74-80, 87	<b>81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95</b>
<b>Suriname</b> 61-72, 74-89	<b>90, 91, 92, 94, 95</b>
<b>Swaziland</b> 60-72, 74-92	<b>94, 95</b>
<b>Sweden</b> 31-56, 58-72, 74-90, 92	<b>91, 94, 95</b>
<b>Switzerland</b> 31-56, 58-72, 74-92	<b>94, 95</b>
<b>Syrian Arab Republic</b> 31-56, 58-65, 67-68, 69(C159; R167), 71-72, 74-76, 77(C170; R177), 87-89	<b>66, 69(R168), 70, 77(C171; P089; R178), 78, 79, 80, 81, 82, 83, 84, 85, 86, 90, 91, 92, 94, 95</b>
<b>Tajikistan</b> 81-83, 86-87	<b>84, 85, 88, 89, 90, 91, 92, 94, 95</b>
<b>United Republic of Tanzania</b> 46-56, 58-72, 74-92, 94-95	-
<b>Thailand</b> 31-56, 58-72, 74-92, 94-95	-
<b>The former Yugoslav Republic of Macedonia</b> 80-82, 87	<b>83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95</b>
<b>Timor-Leste</b> -	<b>92, 94, 95</b>
<b>Togo</b> 44-56, 58-72, 74-87, 89	<b>88, 90, 91, 92, 94, 95</b>

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Trinidad and Tobago</b> 47-56, 58-72, 74-92	94, 95
<b>Tunisia</b> 39-56, 58-72, 74-92, 94-95	-
<b>Turkey</b> 31-56, 58-72, 74-92, 94-95	-
<b>Turkmenistan</b> -	81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95
<b>Uganda</b> 47-56, 58-72, 74-80, 87	81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Ukraine</b> 37-56, 58-72, 74-90	91, 92, 94, 95
<b>United Arab Emirates</b> 58-72, 74-92, 95	94
<b>United Kingdom</b> 31-56, 58-72, 74-92, 94-95	-
<b>United States</b> 31-56, 58-60, 66-72, 74-92	94, 95
<b>Uruguay</b> 31-56, 58-72, 74-87, 89, 90(R193; R194), 91-92, 95(R197; R198)	88, 90(P155), 94, 95(C187)
<b>Uzbekistan</b> -	80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95
<b>Vanuatu</b> 91	92, 94, 95
<b>Bolivarian Republic of Venezuela</b> 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
<b>Viet Nam</b> 33-56, 58-63, 80-92, 94-95	-
<b>Yemen</b> 49-56, 58-72, 74-87, 88(C183), 89(C184)	88(R191), 89(R192), 90, 91, 92, 94, 95
<b>Zambia</b> 49-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95
<b>Zimbabwe</b> 66-72, 74-92, 94	95

**Appendix VI. Overall position of member States with regard to  
the submission to the competent authorities of  
the instruments adopted by the Conference  
(as of 7 December 2007)**

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	4	2	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)	139	3	6	148
70th (June 1984)	139		10	149
71st (June 1985)	142	1	6	149
72nd (June 1986)	143		6	149
74th (October 1987)	141	1	7	149
75th (June 1988)	137	4	8	149
76th (June 1989)	137		10	147
77th (June 1990)	129	5	13	147
78th (June 1991)	132	1	16	149
79th (June 1992)	134	3	19	156
80th (June 1993)	139	2	26	167
81st (June 1994)	135	3	33	171
82nd (June 1995)	124	11	38	173
83rd (June 1996)	120	4	50	174
84th (October 1996)	110	15	49	174
85th (June 1997)	119	3	52	174
86th (June 1998)	115		59	174
87th (June 1999)	169		5	174
88th (June 2000)	101	6	68	175
89th (June 2001)	101	6	68	175
90th (June 2002)	86	10	79	175
91st (June 2003)	92		84	176
92nd (June 2004)	79		98	177
94th (February 2006)	53		125	178
95th (June 2006)	51	2	125	178

## Appendix VII. Comments made by the Committee, by country

*The comments referred to below have been drawn up in the form of either "observations", which are reproduced in this report, or "direct requests", which are not published but are communicated directly to the governments concerned.  
This table also lists acknowledgements by the Committee of responses received to direct requests.*

<b>Afghanistan</b>	<b>Observations on Conventions Nos 100, 111</b> <i>Direct requests on Conventions Nos 13, 14, 95, 106, 137, 139</i> <b>Observation on submission</b>
<b>Albania</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 98, 144</b> <i>Direct requests on Conventions Nos 26, 29, 77, 78, 95, 105, 131, 141, 150, 178, 181</i> <i>Direct request on submission</i>
<b>Algeria</b>	<b>Observations on Conventions Nos 29, 32, 42, 87, 100, 105, 111, 119, 120, 122, 138, 144</b> <i>Direct requests on Conventions Nos 17, 24, 29, 44, 81, 97, 100, 105, 111, 182</i> <i>Response received to a direct request on Convention No. 98</i>
<b>Angola</b>	<b>Observations on Conventions Nos 17, 18, 27, 88, 98, 111</b> <i>Direct requests on Conventions Nos 12, 19, 29, 87, 98, 100, 105, 111, 182</i> <b>Observation on submission</b>
<b>Antigua and Barbuda</b>	<b>General observation</b> <b>Observations on Conventions Nos 17, 87, 138</b> <i>Direct requests on Conventions Nos 14, 29, 94, 111</i> <b>Observation on submission</b>
<b>Argentina</b>	<b>Observations on Conventions Nos 26, 29, 32, 42, 81, 87, 95, 100, 111</b> <i>Direct requests on Conventions Nos 17, 27, 81, 129, 144, 150, 156</i> <i>Response received to a direct request on Convention No. 98</i> <b>Observation on submission</b>
<b>Armenia</b>	<b>General observation</b> <b>Observation on Convention No. 98</b> <i>Direct requests on Conventions Nos 81, 95, 98, 100, 122, 135, 151, 154</i> <b>Observation on submission</b>
<b>Australia</b>  Norfolk Island	<b>Observations on Conventions Nos 29, 87, 98, 100, 111, 135, 158</b> <i>Direct requests on Conventions Nos 29, 81, 87, 98, 100, 111, 112, 122, 137, 156</i> <i>Direct requests on Conventions Nos 100, 112, 131, 156</i>
<b>Austria</b>	<b>Observation on Convention No. 87</b> <i>Direct requests on Conventions Nos 94, 95, 100, 111</i> <i>Response received to a direct request on Convention No. 24</i> <i>Direct request on submission</i>
<b>Azerbaijan</b>	<b>Observations on Conventions Nos 87, 98, 119</b> <i>Direct requests on Conventions Nos 27, 29, 81, 105, 129, 144, 182</i> <i>Response received to a direct request on Convention No. 135</i> <b>Observation on submission</b>
<b>Bahamas</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 26, 29, 97, 100, 111, 138, 144, 147, 182</i> <i>Response received to a direct request on Convention No. 22</i> <b>Observation on submission</b>
<b>Bahrain</b>	<i>Direct requests on Conventions Nos 29, 105, 111, 182</i> <b>Observation on submission</b>
<b>Bangladesh</b>	<b>Observations on Conventions Nos 29, 59, 87, 98, 144, 182</b> <i>Direct requests on Conventions Nos 27, 182</i> <b>Observation on submission</b>

<b>Barbados</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 81, 87, 98, 108, 118, 122</b></p> <p><i>Direct requests on Conventions Nos 26, 95, 97, 100, 102, 105, 111, 128, 138, 144, 147</i></p> <p><i>Direct request on submission</i></p>
<b>Belarus</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 144</b></p> <p><i>Direct requests on Conventions Nos 26, 81, 95</i></p>
<b>Belgium</b>	<p><b>Observations on Conventions Nos 81, 87</b></p> <p><i>Direct requests on Conventions Nos 29, 32, 81, 102, 129, 174, 180</i></p> <p><i>Response received to a direct request on Convention No. 98</i></p> <p><i>Direct request on submission</i></p>
<b>Belize</b>	<p><b>Observations on Conventions Nos 87, 98, 105, 144</b></p> <p><i>Direct requests on Conventions Nos 23, 26, 29, 81, 88, 94, 95, 97, 98, 99, 100, 105, 111, 115, 138, 141, 150, 151, 154, 155, 156, 182</i></p> <p><b>Observation on submission</b></p>
<b>Benin</b>	<p><b>Observations on Conventions Nos 87, 105</b></p> <p><i>Direct requests on Conventions Nos 18, 29, 81, 98, 100, 105, 111, 138, 144, 182</i></p>
<b>Bolivia</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 1, 30, 77, 78, 81, 87, 95, 96, 98, 102, 105, 111, 118, 121, 122, 128, 129, 130, 131, 136, 138</b></p> <p><i>Direct requests on Conventions Nos 19, 95, 100, 105, 111, 118, 124, 138, 156, 182</i></p> <p><b>Observation on submission</b></p>
<b>Bosnia and Herzegovina</b>	<p><b>Observations on Conventions Nos 13, 81, 87, 98</b></p> <p><i>Direct requests on Conventions Nos 12, 19, 81, 87, 90, 98, 113, 126, 131, 135, 156, 158, 159, 161</i></p> <p><b>Observation on submission</b></p>
<b>Botswana</b>	<p><b>Observations on Conventions Nos 87, 98, 144</b></p> <p><i>Direct requests on Conventions Nos 95, 100, 173, 176, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Brazil</b>	<p><b>Observations on Conventions Nos 29, 81, 94, 98, 125, 131, 136, 137, 138, 139, 148, 155, 161, 170, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 98, 100, 122, 126, 131, 138, 144, 160, 161, 182</i></p> <p><b>Observation on submission</b></p>
<b>Bulgaria</b>	<p><b>Observations on Conventions Nos 87, 94, 98</b></p> <p><i>Direct requests on Conventions Nos 26, 27, 77, 78, 95, 113, 138, 163, 173, 182</i></p>
<b>Burkina Faso</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 100, 129, 144, 161, 182</b></p> <p><i>Direct requests on Conventions Nos 17, 19, 87, 100, 111, 131, 138, 141, 159, 182</i></p> <p><b>Observation on submission</b></p>
<b>Burundi</b>	<p><b>Observations on Conventions Nos 29, 87, 98, 138, 144, 182</b></p> <p><i>Direct requests on Conventions Nos 27, 29, 87, 105, 138, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Cambodia</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 13, 87, 98, 122</b></p> <p><i>Direct requests on Conventions Nos 4, 6, 87, 100, 105, 111, 138, 150</i></p> <p><b>Observation on submission</b></p>
<b>Cameroon</b>	<p><b>Observations on Conventions Nos 29, 81, 87, 94, 98, 100, 105, 111, 122, 158</b></p> <p><i>Direct requests on Conventions Nos 29, 95, 100, 111, 131</i></p> <p><b>Observation on submission</b></p>
<b>Canada</b>	<p><b>Observations on Conventions Nos 32, 87, 105</b></p> <p><i>Direct requests on Conventions Nos 26, 122</i></p>
<b>Cape Verde</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 81, 98, 118</b></p> <p><i>Direct requests on Conventions Nos 17, 19, 29, 87, 100, 111, 118, 182</i></p> <p><b>Observation on submission</b></p>

<b>Central African Republic</b>	<b>Observations on Conventions Nos 18, 87, 94, 95, 98, 100, 117, 118</b> <i>Direct requests on Conventions Nos 6, 100, 111, 118, 138, 182</i> <b>Observation on submission</b>
<b>Chad</b>	<i>General direct request</i> <b>Observations on Conventions Nos 81, 87, 111, 144</b> <i>Direct requests on Conventions Nos 98, 100, 111, 173, 182</i> <b>Observation on submission</b>
<b>Chile</b>	<b>Observations on Conventions Nos 35, 36, 37, 38, 87, 98, 121, 144, 156, 162</b> <i>Direct requests on Conventions Nos 29, 32, 105, 156, 162</i> <b>Observation on submission</b>
<b>China</b>	<i>Direct request on Convention No. 32</i>
Hong Kong Special Administrative Region	<b>Observations on Conventions Nos 17, 81, 97, 98</b> <i>Direct requests on Conventions Nos 17, 29, 92, 97, 133</i>
Macau Special Administrative Region	<i>Direct requests on Conventions Nos 22, 23, 27, 29, 81, 87, 98, 105, 144</i>
<b>Colombia</b>	<b>Observations on Conventions Nos 12, 17, 24, 87, 95, 98, 100, 111, 129, 144, 169</b> <i>Direct requests on Conventions Nos 18, 19, 24, 25, 26, 29, 87, 99, 100, 111, 129, 138</i> <b>Observation on submission</b>
<b>Comoros</b>	<b>Observations on Conventions Nos 17, 19, 26, 42, 81, 98, 122</b> <i>Direct requests on Conventions Nos 77, 78, 100, 111</i> <b>Observation on submission</b>
<b>Congo</b>	<b>General observation</b> <b>Observations on Conventions Nos 29, 87, 95, 144, 152, 182</b> <i>Direct requests on Conventions Nos 6, 26, 81, 98, 100, 105, 111, 138, 149, 182</i> <b>Observation on submission</b>
<b>Costa Rica</b>	<b>Observations on Conventions Nos 87, 98, 102, 111, 120, 138, 148</b> <i>Direct requests on Conventions Nos 100, 102, 111, 137, 144, 182</i> <i>Response received to a direct request on Convention No. 130</i> <i>Direct request on submission</i>
<b>Côte d'Ivoire</b>	<b>Observations on Conventions Nos 87, 98, 111</b> <i>Direct requests on Conventions Nos 19, 29, 81, 100, 111, 129, 144, 159</i> <b>Observation on submission</b>
<b>Croatia</b>	<b>Observations on Conventions Nos 87, 98, 156, 162</b> <i>Direct requests on Conventions Nos 32, 81, 87, 102, 122, 129, 156</i> <i>Response received to a direct request on Convention No. 27</i> <b>Observation on submission</b>
<b>Cuba</b>	<b>Observations on Conventions Nos 87, 98, 183</b> <i>Direct requests on Conventions Nos 29, 94, 97, 100, 105, 110, 111, 122, 152, 183</i> <i>Direct request on submission</i>
<b>Cyprus</b>	<b>Observations on Conventions Nos 81, 87</b> <i>Direct requests on Conventions Nos 81, 97, 98, 100, 111, 114, 122, 143, 152, 158</i> <i>Response received to a direct request on Convention No. 19</i> <i>Direct request on submission</i>
<b>Czech Republic</b>	<b>Observations on Conventions Nos 87, 98, 111, 144</b> <i>Direct requests on Conventions Nos 27, 87, 100, 111</i>
<b>Democratic Republic of the Congo</b>	<i>General direct request</i> <b>Observations on Conventions Nos 29, 81, 87, 88, 94, 98, 102, 117, 118, 119, 121, 144, 150, 158, 182</b> <i>Direct requests on Conventions Nos 14, 29, 81, 87, 98, 100, 105, 111, 138, 150, 182</i> <b>Observation on submission</b>
<b>Denmark</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 27, 29, 87, 92, 118, 126, 133, 152, 180</i>
Faeroe Islands	<b>General observation</b>

Greenland	<i>Direct request on Convention No. 126</i>
<b>Djibouti</b>	<b>Observations on Conventions Nos 17, 19, 24, 26, 37, 87, 88, 94, 95, 96, 98, 99, 115, 120, 122</b> <i>Direct requests on Conventions Nos 9, 14, 16, 18, 19, 29, 38, 45, 52, 81, 87, 89, 100, 101, 105, 144</i> <b>Observation on submission</b>
<b>Dominica</b>	<b>General observation</b> <b>Observations on Conventions Nos 26, 29, 87, 138</b> <i>Direct requests on Conventions Nos 14, 16, 19, 29, 81, 94, 95, 97, 100, 105, 111</i> <b>Observation on submission</b>
<b>Dominican Republic</b>	<b>Observations on Conventions Nos 81, 87, 98, 100, 111</b> <i>Direct requests on Conventions Nos 19, 81, 100, 105, 111, 171</i> <i>Direct request on submission</i>
<b>Ecuador</b>	<b>Observations on Conventions Nos 87, 98, 105, 130, 152</b> <i>Direct request on Convention No. 105</i> <i>Direct request on submission</i>
<b>Egypt</b>	<b>Observations on Conventions Nos 29, 87, 98</b> <i>Direct requests on Conventions Nos 29, 68, 87, 100, 111, 137, 144, 152, 166</i>
<b>El Salvador</b>	<b>Observations on Conventions Nos 29, 144</b> <i>Direct requests on Conventions Nos 29, 105</i> <b>Observation on submission</b>
<b>Equatorial Guinea</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 29, 100, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>Eritrea</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 87, 100, 111</i> <i>Direct request on submission</i>
<b>Estonia</b>	<b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 6, 19, 27, 100, 122</i> <i>Response received to a direct request on Convention No. 11</i> <i>Direct request on submission</i>
<b>Ethiopia</b>	<b>Observations on Conventions Nos 87, 98, 111</b> <i>Direct requests on Conventions Nos 29, 88, 100, 111, 156, 158</i> <b>Observation on submission</b>
<b>Fiji</b>	<b>Observations on Conventions Nos 87, 98, 100, 111, 144, 169</b> <i>Direct requests on Conventions Nos 87, 98, 100, 105, 111, 159, 169</i> <b>Observation on submission</b>
<b>Finland</b>	<b>Observations on Conventions Nos 81, 152, 156, 158</b> <i>Direct requests on Conventions Nos 12, 19, 118, 129, 156</i>
<b>France</b>	<b>Observations on Conventions Nos 87, 88, 94, 96, 100, 111, 122, 156, 158</b> <i>Direct requests on Conventions Nos 27, 87, 95, 96, 97, 98, 100, 102, 111, 113, 114, 125, 126, 131, 137, 152, 156, 163, 164, 166, 178, 179</i>
French Guiana	<i>General direct request</i> <b>Observations on Conventions Nos 35, 36, 37, 38, 129</b> <i>Direct requests on Conventions Nos 27, 42, 81, 95, 100, 111, 112, 113, 114, 125, 126, 129</i>
French Polynesia	<b>Observations on Conventions Nos 42, 44, 115</b> <i>Direct requests on Conventions Nos 29, 37, 38, 95, 100, 111, 122, 125, 131, 144</i> <i>Response received to a direct request on Convention No. 19</i>
French Southern and Antarctic Territories	<i>General direct request</i> <i>Direct requests on Conventions Nos 87, 98, 111</i>
Guadeloupe	<i>General direct request</i> <b>Observation on Convention No. 115</b> <i>Direct requests on Conventions Nos 27, 42, 81, 100, 111, 112, 113, 114, 125, 126</i>

<b>Martinique</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 35, 36, 37, 38, 94</b></p> <p><i>Direct requests on Conventions Nos 27, 42, 81, 100, 111, 112, 113, 114, 125, 126, 129, 131</i></p>
<b>New Caledonia</b>	<p><b>Observations on Conventions Nos 81, 95, 127</b></p> <p><i>Direct requests on Conventions Nos 42, 44, 98, 100, 111, 122, 129, 131, 144</i></p>
<b>Réunion</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 35, 36, 37, 38</b></p> <p><i>Direct requests on Conventions Nos 27, 42, 100, 111, 112, 113, 114, 125, 126</i></p>
<b>St. Pierre and Miquelon</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 42</b></p> <p><i>Direct requests on Conventions Nos 100, 111, 122, 125, 126</i></p>
<b>Gabon</b>	<p><b>Observations on Conventions Nos 81, 87, 144, 158</b></p> <p><i>Direct requests on Conventions Nos 3, 87, 98, 100, 111</i></p> <p><b>Observation on submission</b></p>
<b>Gambia</b>	<p><b>General observation</b></p> <p><b>Observation on Convention No. 98</b></p> <p><i>Direct requests on Conventions Nos 87, 100, 111</i></p> <p><b>Observation on submission</b></p>
<b>Georgia</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 87, 98</b></p> <p><i>Direct requests on Conventions Nos 87, 122, 181</i></p> <p><b>Observation on submission</b></p>
<b>Germany</b>	<p><b>Observations on Conventions Nos 81, 87, 98</b></p> <p><i>Direct requests on Conventions Nos 26, 27, 99, 100, 114</i></p>
<b>Ghana</b>	<p><b>Observations on Conventions Nos 87, 96, 98, 105, 115, 119</b></p> <p><i>Direct requests on Conventions Nos 22, 23, 29, 69, 74, 81, 87, 92, 105, 148</i></p> <p><b>Observation on submission</b></p>
<b>Greece</b>	<p><b>Observations on Conventions Nos 17, 29, 42, 95, 105, 156</b></p> <p><i>Direct requests on Conventions Nos 102, 105, 138, 156, 180, 182</i></p>
<b>Grenada</b>	<p><b>Observations on Conventions Nos 100, 144</b></p> <p><i>Direct requests on Conventions Nos 8, 26, 87, 94, 95, 97, 99, 100, 111</i></p> <p><b>Observation on submission</b></p>
<b>Guatemala</b>	<p><b>Observations on Conventions Nos 29, 81, 87, 98, 100, 105, 111, 129, 169</b></p> <p><i>Direct requests on Conventions Nos 81, 97, 100, 105, 111, 129, 148</i></p>
<b>Guinea</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 26, 81, 87, 94, 98, 99, 111, 115, 118, 119, 121, 122, 134, 144</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 90, 95, 105, 111, 113, 114, 118, 136, 143, 148, 150, 152, 156, 159</i></p> <p><b>Observation on submission</b></p>
<b>Guinea-Bissau</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 18, 19, 98</b></p> <p><i>Direct requests on Conventions Nos 12, 17, 26, 29, 81, 105, 111</i></p>
<b>Guyana</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 29, 42, 87, 98, 100, 111, 129</b></p> <p><i>Direct requests on Conventions Nos 19, 81, 97, 100, 111, 137, 144, 150</i></p> <p><i>Direct request on submission</i></p>
<b>Haiti</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 24, 25, 29, 42, 81, 87, 98</b></p> <p><i>Direct requests on Conventions Nos 5, 12, 17, 45, 77, 78, 100, 111</i></p> <p><b>Observation on submission</b></p>
<b>Honduras</b>	<p><b>Observations on Conventions Nos 87, 98, 100, 108, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 27, 32, 42, 100, 111, 182</i></p> <p><i>Direct request on submission</i></p>

<b>Hungary</b>	<i>Direct requests on Conventions Nos 24, 26, 27, 81, 98, 99, 105, 129, 183</i> <i>Direct request on submission</i>
<b>Iceland</b>	<b>Observations on Conventions Nos 98, 144</b> <i>Direct requests on Conventions Nos 29, 102, 122, 156</i>
<b>India</b>	<b>Observations on Conventions Nos 26, 29, 81, 100, 111, 118</b> <i>Direct requests on Conventions Nos 29, 32, 42, 81, 105, 108</i> <i>Direct request on submission</i>
<b>Indonesia</b>	<b>Observations on Conventions Nos 19, 29, 87, 98, 100, 105, 111, 138, 144, 182</b> <i>Direct requests on Conventions Nos 27, 81, 98, 100, 105, 111, 138, 182</i>
<b>Islamic Republic of Iran</b>	<b>Observations on Conventions Nos 95, 111</b> <i>Direct requests on Conventions Nos 19, 29, 100</i> <b>Observation on submission</b>
<b>Iraq</b>	<b>General observation</b> <b>Observations on Conventions Nos 13, 17, 95, 98, 115</b> <i>Direct requests on Conventions Nos 22, 23, 42, 94, 108, 120, 136, 147, 167</i>
<b>Ireland</b>	<i>General direct request</i> <b>Observation on Convention No. 81</b> <i>Direct requests on Conventions Nos 98, 122, 144, 178, 179</i> <b>Observation on submission</b>
<b>Israel</b>	<i>Direct requests on Conventions Nos 81, 87, 105, 118</i> <i>Response received to a direct request on Convention No. 98</i>
<b>Italy</b>	<b>Observations on Conventions Nos 81, 95, 102, 118, 122, 129, 136, 137, 139</b> <i>Direct requests on Conventions Nos 12, 26, 29, 42, 94, 99, 102, 105, 114, 167</i>
<b>Jamaica</b>	<b>Observations on Conventions Nos 29, 87, 98, 100, 105</b> <i>Direct requests on Conventions Nos 19, 94, 97, 100, 111, 122, 144</i> <i>Direct request on submission</i>
<b>Japan</b>	<b>Observations on Conventions Nos 19, 27, 29, 87, 98, 100, 102, 121</b> <i>Direct request on Convention No. 144</i>
<b>Jordan</b>	<b>Observations on Conventions Nos 98, 100, 111</b> <i>Direct requests on Conventions Nos 81, 100, 111, 144</i> <i>Direct request on submission</i>
<b>Kazakhstan</b>	<b>Observations on Conventions Nos 87, 98, 148</b> <i>Direct requests on Conventions Nos 29, 81, 100, 105, 111, 129, 144, 148</i> <b>Observation on submission</b>
<b>Kenya</b>	<b>Observations on Conventions Nos 17, 138, 143</b> <i>Direct requests on Conventions Nos 32, 97, 99, 131, 143, 182</i> <b>Observation on submission</b>
<b>Kiribati</b>	<b>General observation</b> <i>Direct requests on Conventions Nos 29, 87, 98, 105</i> <b>Observation on submission</b>
<b>Republic of Korea</b>	<b>Observations on Conventions Nos 81, 100, 111</b> <i>Direct requests on Conventions Nos 19, 81, 111, 122, 138, 144, 156, 182</i>
<b>Kuwait</b>	<b>Observations on Conventions Nos 111, 138</b> <i>Direct requests on Conventions Nos 81, 111, 182</i> <i>Direct request on submission</i>
<b>Kyrgyzstan</b>	<b>General observation</b> <b>Observations on Conventions Nos 122, 148</b> <i>Direct requests on Conventions Nos 14, 52, 77, 78, 79, 81, 87, 95, 98, 100, 124, 149, 154</i> <b>Observation on submission</b>

<b>Lao People's Democratic Republic</b>	<p><i>General direct request</i></p> <p><i>Direct request on Convention No. 29</i></p> <p><b>Observation on submission</b></p>		
<b>Latvia</b>	<p><b>Observations on Conventions Nos 122, 150, 158</b></p> <p><i>Direct requests on Conventions Nos 6, 105, 131, 173</i></p>		
<b>Lebanon</b>	<p><b>Observations on Conventions Nos 17, 29, 81, 100, 111, 127</b></p> <p><i>Direct requests on Conventions Nos 19, 29, 59, 77, 78, 81, 90, 100, 105, 111, 122, 127, 136, 138, 147, 152, 182</i></p>		
<b>Lesotho</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 158</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 100, 105, 111, 138, 150, 182</i></p> <p><i>Direct request on submission</i></p>		
<b>Liberia</b>	<p><b>General observation</b></p> <p><b>Observations on Conventions Nos 22, 55, 58, 87, 92, 98, 105, 111, 112, 113, 114, 133</b></p> <p><i>Direct requests on Conventions Nos 53, 147</i></p> <p><b>Observation on submission</b></p>		
<b>Libyan Arab Jamahiriya</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 81, 95, 102, 103, 105, 111, 118, 121, 128, 130, 131</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 100, 102, 111, 118, 121, 122, 128, 130, 182</i></p> <p><b>Observation on submission</b></p>		
<b>Lithuania</b>	<p><b>Observation on Convention No. 88</b></p> <p><i>Direct requests on Conventions Nos 27, 29, 122, 131, 138, 156, 173, 181, 182</i></p> <p><i>Response received to direct requests on Conventions Nos 79, 90, 105</i></p>		
<b>Luxembourg</b>	<p><b>Observations on Conventions Nos 81, 111</b></p> <p><i>Direct requests on Conventions Nos 81, 100, 111, 133, 158, 172, 178, 180</i></p> <p><i>Response received to direct requests on Conventions Nos 77, 78, 138, 182</i></p>		
<b>Madagascar</b>	<p><b>Observations on Conventions Nos 29, 81, 111, 122, 129</b></p> <p><i>Direct requests on Conventions Nos 6, 29, 81, 111, 118, 124, 129, 138, 182</i></p> <p><b>Observation on submission</b></p>		
<b>Malawi</b>	<p><b>Observations on Conventions Nos 81, 87, 100, 111, 129, 138, 144</b></p> <p><i>Direct requests on Conventions Nos 12, 19, 26, 29, 81, 87, 97, 99, 100, 105, 111, 129, 138, 150, 158, 182</i></p> <p><i>Response received to a direct request on Convention No. 98</i></p>		
<b>Malaysia</b>	<p><i>General direct request</i></p> <p><b>Observation on Convention No. 81</b></p> <p><i>Direct requests on Conventions Nos 29, 95, 138, 144, 182</i></p> <td> <p><b>Sabah</b></p> <p><i>General direct request</i></p> <p><b>Observation on Convention No. 97</b></p> <p><i>Direct request on Convention No. 94</i></p> </td> <td> <p><b>Sarawak</b></p> <p><i>General direct request</i></p> <p><b>Observation on Convention No. 19</b></p> </td>	<p><b>Sabah</b></p> <p><i>General direct request</i></p> <p><b>Observation on Convention No. 97</b></p> <p><i>Direct request on Convention No. 94</i></p>	<p><b>Sarawak</b></p> <p><i>General direct request</i></p> <p><b>Observation on Convention No. 19</b></p>
<b>Mali</b>	<p><b>Observation on Convention No. 182</b></p> <p><i>Direct requests on Conventions Nos 6, 29, 100, 105, 111, 138, 182</i></p> <p><i>Direct request on submission</i></p>		
<b>Malta</b>	<p><b>Observations on Conventions Nos 16, 87, 98</b></p> <p><i>Direct requests on Conventions Nos 22, 32, 53, 77, 78, 81, 100, 111, 124, 129, 131, 180, 182</i></p> <p><i>Response received to direct requests on Conventions Nos 73, 87, 98, 138</i></p> <p><i>Direct request on submission</i></p>		
<b>Mauritania</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 26, 29, 81, 94, 95, 102, 118, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 29, 81, 105, 122, 138, 182</i></p> <p><i>Direct request on submission</i></p>		

<b>Mauritius</b>	<b>Observations on Conventions Nos 94, 138, 182</b> <i>Direct requests on Conventions Nos 26, 32, 81, 87, 88, 95, 97, 99, 100, 111, 137, 138, 156, 159, 182</i>
<b>Mexico</b>	<b>Observations on Conventions Nos 22, 90, 100, 102, 111, 169, 182</b> <i>Direct requests on Conventions Nos 19, 27, 100, 102, 111, 118, 131, 152, 163, 173, 182</i> <i>Direct request on submission</i>
<b>Republic of Moldova</b>	<i>General direct request</i> <b>Observations on Conventions Nos 95, 98, 105</b> <i>Direct requests on Conventions Nos 29, 92, 95, 105, 119, 122, 131, 133, 138, 158, 182</i> <i>Direct request on submission</i>
<b>Mongolia</b>	<i>General direct request</i> <i>Direct requests on Conventions Nos 98, 100, 111, 122, 123, 138, 182</i> <b>Observation on submission</b>
<b>Morocco</b>	<b>Observations on Conventions Nos 94, 138, 182</b> <i>Direct requests on Conventions Nos 26, 81, 99, 122, 129, 138, 145, 179, 182</i>
<b>Mozambique</b>	<b>Observations on Conventions Nos 81, 122</b> <i>Direct requests on Conventions Nos 17, 18, 81, 100, 144</i> <b>Observation on submission</b>
<b>Myanmar</b>	<b>Observations on Conventions Nos 26, 29, 87</b> <i>Direct requests on Conventions Nos 6, 42</i>
<b>Namibia</b>	<b>Observations on Conventions Nos 111, 158</b> <i>Direct requests on Conventions Nos 111, 138, 150, 182</i> <b>Observation on submission</b>
<b>Nepal</b>	<b>Observations on Conventions Nos 100, 111</b> <i>Direct requests on Conventions Nos 100, 111, 131, 138, 182</i> <b>Observation on submission</b>
<b>Netherlands</b>	<b>Observations on Conventions Nos 81, 94, 102, 111, 122, 159, 180</b> <i>Direct requests on Conventions Nos 29, 88, 90, 95, 100, 102, 111, 121, 126, 128, 131, 138, 156, 180, 181, 182</i>
Aruba	<b>Observations on Conventions Nos 94, 122</b> <i>Direct requests on Conventions Nos 8, 25, 29, 81, 88, 95, 105, 113, 114, 126, 131</i> <i>Response received to a direct request on Convention No. 12</i>
Netherlands Antilles	<i>General direct request</i> <i>Direct requests on Conventions Nos 8, 33, 81, 122</i>
<b>New Zealand</b>	<b>Observations on Conventions Nos 17, 26, 32, 97, 100, 111, 122</b> <i>Direct requests on Conventions Nos 12, 42, 59, 81, 97, 99, 100, 111, 182</i>
Tokelau	<i>Direct requests on Conventions Nos 100, 111</i> <i>Response received to a direct request on Convention No. 29</i>
<b>Nicaragua</b>	<b>Observations on Conventions Nos 77, 78, 122</b> <i>Direct requests on Conventions Nos 77, 100, 111</i> <i>Direct request on submission</i>
<b>Niger</b>	<b>Observations on Conventions Nos 29, 81, 102, 117, 182</b> <i>Direct requests on Conventions Nos 29, 100, 105, 111, 119, 138, 156, 158, 182</i> <b>Observation on submission</b>
<b>Nigeria</b>	<i>General observation</i> <b>Observations on Conventions Nos 81, 105, 123</b> <i>Direct requests on Conventions Nos 8, 26, 29, 32, 94, 95, 97, 111, 138, 182</i> <b>Observation on submission</b>
<b>Norway</b>	<b>Observations on Conventions Nos 81, 111, 129, 168</b> <i>Direct requests on Conventions Nos 8, 94, 111, 122, 182</i> <i>Response received to direct requests on Conventions Nos 90, 138</i>

<b>Oman</b>	<b>Observation on Convention No. 182</b> <i>Direct requests on Conventions Nos 29, 138, 182</i> <i>Direct request on submission</i>
<b>Pakistan</b>	<b>Observations on Conventions Nos 11, 29, 32, 59, 81, 100, 105, 111, 144</b> <i>Direct requests on Conventions Nos 18, 27, 100, 105</i> <i>Response received to a direct request on Convention No. 90</i> <b>Observation on submission</b>
<b>Panama</b>	<b>Observations on Conventions Nos 17, 30, 32, 55, 56, 81, 87, 94, 100, 111</b> <i>Direct requests on Conventions Nos 12, 19, 100, 111, 122, 125, 126, 138, 182</i> <i>Response received to direct requests on Conventions Nos 77, 78</i> <i>Direct request on submission</i>
<b>Papua New Guinea</b>	<b>Observations on Conventions Nos 98, 105, 158</b> <i>Direct requests on Conventions Nos 19, 26, 27, 29, 87, 99, 100, 111, 122, 138, 182</i> <b>Observation on submission</b>
<b>Paraguay</b>	<b>Observations on Conventions Nos 29, 59, 77, 78, 79, 81, 90, 119, 120, 169, 182</b> <i>Direct requests on Conventions Nos 26, 99, 100, 138, 169, 182</i> <b>Observation on submission</b>
<b>Peru</b>	<i>General direct request</i> <b>Observations on Conventions Nos 55, 56, 100, 111, 122, 169</b> <i>Direct requests on Conventions Nos 12, 56, 100, 111, 144, 147, 156</i> <b>Observation on submission</b>
<b>Philippines</b>	<b>Observations on Conventions Nos 17, 87, 90, 94, 100, 105, 111, 122, 182</b> <i>Direct requests on Conventions Nos 17, 87, 99, 100, 105, 111, 118, 138, 165, 179, 182</i>
<b>Poland</b>	<b>Observations on Conventions Nos 81, 95, 98, 122</b> <i>Direct requests on Conventions Nos 12, 17, 19, 24, 25, 27, 29, 42, 98, 99, 113, 148, 159, 161, 182</i> <i>Response received to direct requests on Conventions Nos 79, 90</i>
<b>Portugal</b>	<b>Observations on Conventions Nos 6, 81, 102, 122, 129, 137</b> <i>Direct requests on Conventions Nos 77, 78, 81, 95, 131, 138, 156, 182</i>
<b>Qatar</b>	<i>Direct request on Convention No. 182</i> <i>Direct request on submission</i>
<b>Romania</b>	<b>Observations on Conventions Nos 87, 95, 111, 137, 138</b> <i>Direct requests on Conventions Nos 29, 95, 100, 105, 111, 122, 131, 134, 168, 182</i> <i>Response received to a direct request on Convention No. 24</i>
<b>Russian Federation</b>	<i>General direct request</i> <b>Observations on Conventions Nos 87, 95, 98, 100, 111, 122, 138, 182</b> <i>Direct requests on Conventions Nos 79, 81, 87, 100, 111, 113, 137, 138, 150, 156, 182</i> <b>Observation on submission</b>
<b>Rwanda</b>	<i>General direct request</i> <b>Observations on Conventions Nos 17, 94, 98, 100, 111</b> <i>Direct requests on Conventions Nos 12, 98, 100, 111, 118, 123, 138, 182</i> <b>Observation on submission</b>
<b>Saint Kitts and Nevis</b>	<b>General observation</b> <i>Direct requests on Conventions Nos 29, 100, 105, 111, 144, 182</i> <b>Observation on submission</b>
<b>Saint Lucia</b>	<b>General observation</b> <b>Observations on Conventions Nos 17, 100</b> <i>Direct requests on Conventions Nos 5, 7, 8, 14, 26, 87, 94, 95, 97, 98, 100, 101, 108, 111, 154</i> <b>Observation on submission</b>
<b>Saint Vincent and the Grenadines</b>	<i>General direct request</i> <i>Direct requests on Conventions Nos 29, 100, 105, 108, 111, 182</i> <b>Observation on submission</b>

<b>Samoa</b>	<i>Direct request on submission</i>
<b>San Marino</b>	<i>General direct request</i> <b>Observation on Convention No. 88</b> <i>Direct requests on Conventions Nos 100, 119, 142, 143, 148, 156, 182</i> <i>Response received to a direct request on Convention No. 29</i>
<b>Sao Tome and Principe</b>	<b>Observations on Conventions Nos 17, 81, 87, 88, 98, 144</b> <i>Direct requests on Conventions Nos 19, 81, 98, 100, 106, 111, 159</i> <b>Observation on submission</b>
<b>Saudi Arabia</b>	<b>Observations on Conventions Nos 29, 90</b> <i>Direct request on Convention No. 182</i> <i>Response received to a direct request on Convention No. 105</i>
<b>Senegal</b>	<i>General direct request</i> <b>Observations on Conventions Nos 6, 13, 96, 120, 121, 122, 138</b> <i>Direct requests on Conventions Nos 10, 26, 29, 81, 95, 98, 99, 102, 105, 138, 144, 182</i> <b>Observation on submission</b>
<b>Serbia</b>	<i>Direct requests on Conventions Nos 19, 27, 32, 90, 97, 102, 105, 138, 143, 144, 182</i> <i>Direct request on submission</i>
<b>Seychelles</b>	<i>General direct request</i> <i>Direct requests on Conventions Nos 22, 26, 99, 100, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>Sierra Leone</b>	<b>General observation</b> <b>Observations on Conventions Nos 17, 29, 59, 98, 111, 125, 144</b> <i>Direct requests on Conventions Nos 26, 81, 87, 94, 95, 99, 100, 126</i> <b>Observation on submission</b>
<b>Singapore</b>	<b>Observations on Conventions Nos 29, 94</b> <i>Direct requests on Conventions Nos 32, 81, 100, 138, 182</i> <i>Response received to a direct request on Convention No. 29</i> <i>Direct request on submission</i>
<b>Slovakia</b>	<b>Observations on Conventions Nos 100, 111, 122, 144</b> <i>Direct requests on Conventions Nos 26, 27, 77, 78, 88, 95, 99, 100, 111, 124, 138, 156, 161, 182</i>
<b>Slovenia</b>	<i>General direct request</i> <b>Observation on Convention No. 156</b> <i>Direct requests on Conventions Nos 27, 32, 81, 91, 97, 108, 114, 121, 122, 126, 129, 131, 138, 143, 156, 173, 180, 182</i> <i>Response received to direct requests on Conventions Nos 19, 24, 25, 29</i> <i>Direct request on submission</i>
<b>Solomon Islands</b>	<b>General observation</b> <i>Direct requests on Conventions Nos 26, 29, 81, 94, 95</i> <b>Observation on submission</b>
<b>Somalia</b>	<b>General observation</b> <b>Observation on submission</b>
<b>South Africa</b>	<b>Observations on Conventions Nos 87, 100</b> <i>Direct requests on Conventions Nos 26, 29, 100, 111, 138, 182</i> <i>Direct request on submission</i>
<b>Spain</b>	<b>Observations on Conventions Nos 19, 44, 68, 77, 78, 81, 122, 129</b> <i>Direct requests on Conventions Nos 94, 95, 97, 129, 131, 138, 173, 182</i> <i>Response received to direct requests on Conventions Nos 29, 68, 123, 157</i> <i>Direct request on submission</i>

<b>Sri Lanka</b>	<p><b>Observations on Conventions Nos 29, 81, 95, 131, 182</b>  <i>Direct requests on Conventions Nos 29, 95, 105, 131, 138, 182</i>  <i>Response received to a direct request on Convention No. 90</i>  <i>Direct request on submission</i></p>
<b>Sudan</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 26, 29, 81, 95, 105, 111, 122, 182</b>  <i>Direct requests on Conventions Nos 100, 105, 111, 138, 182</i>  <b>Observation on submission</b></p>
<b>Suriname</b>	<p><b>Observations on Conventions Nos 81, 94</b>  <i>Direct requests on Conventions Nos 81, 95, 122</i>  <i>Direct request on submission</i></p>
<b>Swaziland</b>	<p><b>Observations on Conventions Nos 29, 81, 87, 98, 111, 144</b>  <i>Direct requests on Conventions Nos 81, 87, 90, 94, 95, 100, 111, 123, 131, 138, 160, 182</i>  <i>Response received to a direct request on Convention No. 11</i>  <b>Observation on submission</b></p>
<b>Sweden</b>	<p><b>Observations on Conventions Nos 81, 156, 158</b>  <i>Direct requests on Conventions Nos 100, 111, 122, 156, 168, 182, 184</i>  <i>Response received to a direct request on Convention No. 118</i>  <i>Direct request on submission</i></p>
<b>Switzerland</b>	<p><b>Observations on Conventions Nos 98, 182</b>  <i>Direct requests on Conventions Nos 29, 100, 111, 138, 182</i></p>
<b>Syrian Arab Republic</b>	<p><b>Observations on Conventions Nos 29, 87, 100, 105, 111, 118, 131</b>  <i>Direct requests on Conventions Nos 17, 29, 94, 95, 100, 111, 125, 138, 182</i>  <b>Observation on submission</b></p>
<b>Tajikistan</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 122, 138</b>  <i>Direct requests on Conventions Nos 11, 29, 77, 78, 95, 98, 100, 124, 138</i>  <b>Observation on submission</b></p>
<b>United Republic of Tanzania</b>	<p><b>Observations on Conventions Nos 17, 29, 105, 134, 152</b>  <i>Direct requests on Conventions Nos 12, 17, 19, 29, 59, 94, 98, 105, 131, 138, 152, 182</i></p>
Tanganyika	<p><b>Observation on Convention No. 81</b>  <i>Direct requests on Conventions Nos 45, 81</i></p>
Zanzibar	<p><i>General direct request</i>  <i>Direct request on Convention No. 97</i></p>
<b>Thailand</b>	<p><b>Observations on Conventions Nos 29, 122, 182</b>  <i>Direct requests on Conventions Nos 19, 88, 100, 138, 182</i></p>
<b>The former Yugoslav Republic of Macedonia</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 98, 135</b>  <i>Direct request on Convention No. 87</i>  <b>Observation on submission</b></p>
<b>Timor-Leste</b>	<p><i>Direct request on submission</i></p>
<b>Togo</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 87, 144</b>  <i>Direct requests on Conventions Nos 26, 29, 100, 105, 111, 138, 143, 182</i>  <b>Observation on submission</b></p>
<b>Trinidad and Tobago</b>	<p><b>Observations on Conventions Nos 87, 98, 100, 105, 125</b>  <i>Direct requests on Conventions Nos 19, 29, 100, 144</i>  <i>Direct request on submission</i></p>
<b>Tunisia</b>	<p><b>Observations on Conventions Nos 118, 127</b>  <i>Direct requests on Conventions Nos 81, 122, 138, 182</i>  <i>Response received to a direct request on Convention No. 77</i></p>

<b>Turkey</b>	<b>Observations on Conventions Nos 29, 42, 87, 88, 96, 100, 105, 111, 118, 122, 144, 158</b> <i>Direct requests on Conventions Nos 29, 68, 69, 73, 77, 87, 92, 100, 105, 111, 115, 123, 133</i>
<b>Turkmenistan</b>	<b>General observation</b> <b>Observation on submission</b>
<b>Uganda</b>	<b>General observation</b> <b>Observations on Conventions Nos 26, 81, 98, 122, 143, 158, 162, 182</b> <i>Direct requests on Conventions Nos 11, 87, 94, 95, 123, 124, 144, 182</i> <b>Observation on submission</b>
<b>Ukraine</b>	<b>Observations on Conventions Nos 95, 100, 111, 119, 122, 138, 144, 156, 182</b> <i>Direct requests on Conventions Nos 27, 29, 32, 77, 78, 79, 81, 100, 105, 108, 113, 124, 126, 129, 138, 147, 150, 156, 158, 182</i> <i>Direct request on submission</i>
<b>United Arab Emirates</b>	<b>Observations on Conventions Nos 138, 182</b> <i>Direct requests on Conventions Nos 100, 111, 138, 182</i>
<b>United Kingdom</b>	<b>Observations on Conventions Nos 29, 105, 147, 180</b> <i>Direct requests on Conventions Nos 29, 102, 105, 114, 122, 124, 138, 182</i> <i>Response received to a direct request on Convention No. 44</i>
Anguilla	<b>General observation</b> <b>Observations on Conventions Nos 8, 17</b> <i>Direct requests on Conventions Nos 22, 23, 26, 29, 59, 94, 97, 99</i>
Bermuda	<b>General observation</b> <b>Observation on Convention No. 94</b> <i>Direct request on Convention No. 59</i>
British Virgin Islands	<b>General observation</b> <b>Observation on Convention No. 94</b> <i>Direct requests on Conventions Nos 19, 26, 59, 97</i> <i>Response received to a direct request on Convention No. 17</i>
Falkland Islands (Malvinas)	<b>General observation</b> <i>Direct requests on Conventions Nos 17, 59</i>
Gibraltar	<b>General observation</b> <b>Observation on Convention No. 42</b> <i>Direct requests on Conventions Nos 59, 81, 100</i>
Guernsey	<b>General observation</b> <i>Direct requests on Conventions Nos 5, 42, 114, 182</i>
Isle of Man	<b>Observations on Conventions Nos 5, 17, 147</b> <i>Direct requests on Conventions Nos 32, 99, 102, 126, 133, 178, 180</i> <i>Response received to a direct request on Convention No. 10</i>
Jersey	<i>Direct requests on Conventions Nos 81, 99</i> <i>Response received to a direct request on Convention No. 5</i>
Montserrat	<b>General observation</b> <b>Observation on Convention No. 8</b> <i>Direct requests on Conventions Nos 14, 26, 29, 59, 95, 97</i> <i>Response received to a direct request on Convention No. 98</i>
St. Helena	<b>General observation</b> <i>Direct requests on Conventions Nos 17, 29, 108</i>
<b>United States</b>	<b>Observations on Conventions Nos 144, 182</b> <i>Direct requests on Conventions Nos 55, 147</i> <i>Direct request on submission</i>
American Samoa	<i>Direct requests on Conventions Nos 55, 147</i>
Guam	<i>Direct requests on Conventions Nos 55, 147</i>
Northern Mariana Islands	<i>Direct request on Convention No. 147</i>
Puerto Rico	<i>Direct requests on Conventions Nos 55, 147</i>
United States Virgin Islands	<i>Direct requests on Conventions Nos 55, 147</i>

<b>Uruguay</b>	<p><b>Observations on Conventions Nos 79, 81, 94, 95, 122, 129, 144, 181</b>  <i>Direct requests on Conventions Nos 32, 81, 95, 97, 129, 131, 137, 138, 159, 167, 182, 184</i>  <i>Response received to a direct request on Convention No. 90</i>  <i>Direct request on submission</i></p>
<b>Uzbekistan</b>	<p><b>General observation</b>  <i>Direct requests on Conventions Nos 29, 98, 100, 105, 111, 122</i>  <b>Observation on submission</b></p>
<b>Vanuatu</b>	<p><i>Direct request on submission</i></p>
<b>Bolivarian Republic of Venezuela</b>	<p><b>Observations on Conventions Nos 26, 81, 87, 111, 138, 143, 144, 158, 182</b>  <i>Direct requests on Conventions Nos 6, 81, 88, 95, 97, 100, 111, 122, 143, 156, 169, 182</i>  <b>Observation on submission</b></p>
<b>Viet Nam</b>	<p><b>Observations on Conventions Nos 100, 111</b>  <i>Direct requests on Conventions Nos 6, 27, 81, 100, 124, 138, 182</i></p>
<b>Yemen</b>	<p><b>Observation on Convention No. 94</b>  <i>Direct requests on Conventions Nos 29, 59, 95, 105, 138, 156, 182</i>  <i>Direct request on submission</i></p>
<b>Zambia</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 29, 97, 138, 182</b>  <i>Direct requests on Conventions Nos 11, 17, 29, 97, 103, 124, 131, 138, 150, 158, 159, 173, 176, 182</i>  <b>Observation on submission</b></p>
<b>Zimbabwe</b>	<p><b>Observations on Conventions Nos 81, 87, 98, 111, 129, 138</b>  <i>Direct requests on Conventions Nos 26, 81, 99, 174, 182</i>  <i>Direct request on submission</i></p>